

1 LEWIS, D'AMATO, BRISBOIS & BISGAARD
DAVID B. PARKER
2 GRAHAM E. BERRY
JAYESH PATEL
3 221 North Figueroa Street, Suite 1200
Los Angeles, California 90012
4 (213) 250-1800

5 JOSEPH A. YANNY, ESQ.
1925 Century Park East
6 Suite 1260
Los Angeles, California 90067
7 (213) 551-2966

8 PATRICK K. SMITH, ESQ.
1408 Talbott Tower
9 131 N. Ludlow Street
Dayton, Ohio 45402-1773
10 (513) 222-6926

11 Attorneys for Defendants JOSEPH A. YANNY, an individual
and JOSEPH A. YANNY, a Professional Law Corporation
12
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

16 RELIGIOUS TECHNOLOGY CENTER, a)
California Non-Profit Religious)
17 Corporation; CHURCH OF)
SCIENTOLOGY INTERNATIONAL, a)
18 California Non-Profit Religious)
Corporation; and CHURCH OF)
19 SCIENTOLOGY OF CALIFORNIA, a)
California Non-Profit Religious)
20 Corporation,)

21 Plaintiffs,)
)
22 vs.)
)

23 JOSEPH A. YANNY, an Individual;)
JOSEPH A. YANNY, a Professional)
24 Law Corporation and DOES 1)
through 25, Inclusive,)
25 Defendants.)
26)

27 AND RELATED CROSS-ACTION)
28)

RECEIVED

MAY 08 1992

HUB LAW OFFICES

No. BC 033035

OPPOSITION OF AMICUS CURIAE AND
PROPOSED INTERVENOR JOSEPH A.
YANNY TO PLAINTIFFS' EX PARTE
APPLICATION TO EXTEND T.R.O.
AGAINST GERALD ARMSTRONG

Date: May 3, 1992

Time: 1:30 p.m.

Dept.: 86

1 I. INTRODUCTION:

2 There has been a **material changed circumstance** regarding this
3 case since entry of the temporary restraining order herein.
4 Accordingly, this Court should not extend the temporary
5 restraining order. On April 27, 1992, Hon. Bruce R. Geernaert
6 clarified his December 23, 1991 ruling and stated that the
7 identical motion to enforce as herein before the Court was denied
8 because the settlement agreement had never been filed as part of
9 the settlement. **See** page 3, para. 3 and page 4 (IIA) herein.

10 The temporary restraining order herein prevents Joseph A.
11 Yanny ("Yanny") from interviewing Armstrong and gathering evidence
12 from him for use in the trial of Religious Technology Center,
13 Church of Scientology International and Church of Scientology of
14 California v. Joseph A. Yanny and Joseph A. Yanny, P.C., L.A.S.C.
15 Case No. BC 033035 ("Yanny II"). Yanny II is scheduled for trial
16 in Department 41 (Hon. Raymond A. Cardenas) on May 18, 1992.

17 The temporary restraining order herein does not preserve the
18 status quo. Instead, it prevented Yanny from having access to
19 Armstrong as a source for trial preparation contrary to an express
20 ruling of Judge Cardenas on August 2, 1991 **See Exhibit A**, pp. 3-4,
21 "The Clash of Judicial Orders", pp. 64-66; "Plaintiffs Preliminary
22 Injunction would cripple the defense of Yanny in Yanny II," pp.
23 66-68, "Plaintiffs preliminary injunction is an end run around the
24 adverse Yanny II decision and would violate Judge Cardenas'
25 express order."

26 In Yanny II, the second of two causes of action for breach of
27 judiciary duty alleges the Yanny, a former Scientology attorney,
28 engaged in adverse representation by allegedly representing

1 Armstrong. Accordingly, Armstrong is one of the most crucial
2 defense witnesses in Yanny II and this T.R.O. prevents him from
3 being a defense resource in Yanny II.

4
5 **II. PROCEDURAL HISTORY REGARDING JOSEPH A. YANNY**

6 On March 3, 1992 Yanny filed his Ex Parte application for an
7 order continuing the hearing date on plaintiffs' order to show
8 cause re preliminary injunction, or in the alternative, for an
9 order shortening time for the hearing date on Joseph A. Yanny's
10 opposition to plaintiff's order to show cause re preliminary
11 injunction, or in the further alternative, for an order allowing
12 appearance and filing of amicus curiae brief in opposition to
13 plaintiff's order to show cause re preliminary injunction.

14 On March 3, 1992 Hon. Michael B. Dufficy (Marin County
15 Superior Court) continued the hearing on Yanny's motion to
16 intervene to Friday March 29 1992 and granted Yanny leave to file
17 an amicus curiae brief in opposition to the proposed preliminary
18 injunction. The judge waived the 15 page limit saying he would
19 rather have everything in writing. The judge also granted
20 Scientology's request for a temporary restraining order expressly
21 "to preserve the status quo." The T.R.O., inter alia, prohibits
22 Armstrong from "actively aiding persons adverse to Scientology".
23 This includes Yanny and Yanny II.

24 On March 16, 1992 Yanny filed his amicus curiae brief, a copy
25 of which is attached hereto as Exhibit A (without exhibits).

26 On March 20, 1992 a hearing was again had before Judge
27 Michael B. Dufficy. Yanny's counsel was permitted to argue to the
28 Court. The hearing was televised by C.N.N. cable news network and

1 portions were broadcast nation wide for two days. At this hearing
2 Judge Dufficy granted Armstrong's motion for change of venue and
3 continued the hearing on all other pending motions to the Los
4 Angeles Superior Court. **Yanny's motion to intervene is one of**
5 **those pending motions.** The temporary restraining order was
6 continued for a further 45 days.

7 In Los Angeles, the case was initially assigned to Hon.
8 Robert O'Brien in Dept. 85. He recognized Armstrong's notice of
9 Related case and transferred it to Hon Bruce R. Geernaert of
10 Department 56 who had denied Scientology the identical relief on
11 December 23, 1991. Indeed, the moving papers herein were word-
12 for-word identical to those earlier moving papers before Judge
13 Geernaert on December 23, 1991 except for the caption.
14 Scientology then filed a C.C.P. Section 170.6 motion. On April
15 27, 1992 a hearing was held during which Judge Geernaert explained
16 his December 23, 1991 ruling. Among other things, Judge Geernaert
17 said that he had held that Scientology could not enforce the
18 settlement agreement because it had not been filed as part of the
19 1986 settlement and all that Scientology could do is possibly sue
20 for breach of contract. Scientology attorney Andrew N. Wilson
21 agreed that this was what they were doing and Judge Geernaert
22 granted Scientology's disqualification motion.

23 The matter was then transferred to this department. A
24 hearing on scientology's motion for preliminary injunction has
25 been set for May 14, 1992 at 1:30 p.m.

26 //

27 //

28 //

1 III. FACTUAL BACKGROUND

2 The Court is respectfully referred to the factual background
3 set forth on pages 6 - 20 and Exhibit A hereto.
4

5 IV. THE TEMPORARY RESTRAINING ORDER SHOULD NOT BE EXTENDED

6 A. THERE IS NO LIKELIHOOD OF SUCCESS ON THE MERITS

7 Judge Geernaert has now ruled that the Settlement Agreement
8 cannot be enforced by way of motion because it was never part of
9 the settlement that was entered on the record before Judge
10 Breckenridge on December 6, 1986 (See Exhibit A, pp. 11-12).
11 Accordingly, Scientology cannot establish a likelihood of success
12 on the merits sufficient to enable a preliminary injunction to
13 issue. Accordingly, the T.R.O. should not be extended.

14 Even if Scientology falls back on Judge Geernaert's breach of
15 contract suggestion, there is still no likelihood of success on
16 the merits at trial for the reasons set forth on pp. 31-59, and
17 68, of Exhibit A hereto (also see Table of Contents, pp. ii &
18 iii).

19 B. THE EQUITIES DO NOT TIP IN SCIENTOLOGY'S FAVOR

20 For the reasons set forth on pp. 60-61 of Exhibit A hereto,
21 the equities do not tip in Scientology's favor and so the
22 temporary restraining order should not be extended.

23 C. THE PUBLIC INTEREST WOULD BE INJURED

24 For the reasons set forth on page 63 of Exhibit A hereto, "it
25 is hard to imagine provisions more contrary to the public
26 interest, to the equity and fairness of the legal system, and to
27 the rights of third persons, such as Yanny, and the media, than
28 those found in the agreement."

1 D. THE T.R.O. IN ARMSTRONG II IS CRIPPLING THE DEFENSE OF
2 THE SECOND CAUSE OF ACTION IN YANNY II.

3 The Yanny II trial is set for May 18, 1992. For the reasons
4 set forth on pages 64-68 of Exhibit A hereto, the T.R.O. in
5 Armstrong II is, crippling the defense's preparation for trial in
6 Yanny II.

7 It is a jurisprudential outrage that Yanny can only have
8 access to the subject of the second cause of action in Yanny II in
9 the context of a judicially supervised deposition at which
10 plaintiffs are present.¹

11 As a result of the T.R.O. herein, Yanny can only interview
12 one of his most important witness in Yanny II in the presence of
13 his litigation adversary - Scientology. That situation may have
14 been acceptable in Soviet Russia. It may still be acceptable in
15 Scientology's own "Justice Courts." However, it is totally
16 unacceptable in the California courts.²

17 This is a blatant manipulation of the judicial system, the
18 silencing of a witness, the suppression of testimony and the
19 spoilation of evidence. It is a flagrant attempt to turn off the
20 evidence of defendant Yanny in Yanny II.

21 Our system of justice is based upon the adversarial clash of
22 evidence in a truth seeking process. One side cannot control the
23 evidence of the other side. One side cannot turn off the evidence
24 of the other side.

25
26 ¹ Judge Cardenas ordered all depositions in Yanny II to be
27 taken before Judge Thomas T. Johnson of J.A.M.S.

28 ² Non Scientology courts are known by Scientologists as "Wog"
courts. Non-Scientologists are also known as "Wogs."

1 Scientology is using this T.R.O. to turn off Yanny's free
2 access to Armstrong as a witness and to turn off the free access
3 of Yanny to Armstrong as a source of information and advice. If
4 the prosecution did this in a criminal case, it would be dismissed
5 because of suppression of evidence and obstruction of justice.

6 The T.R.O. is having that effect upon Yanny's trial
7 preparation in Yanny II. It is not preserving the status quo.
8 Instead, it is skewering the truth seeking process by ensuring
9 that Yanny's trial preparation is crippled.

10
11 V. IN THE ALTERNATIVE, THE T.R.O. SHOULD BE SPECIFICALLY
12 TAILORED TO PERMIT ARMSTRONG TO ASSIST IN THE DEFENSE OF
13 YANNY IN YANNY II.

14 For the reasons set forth on pp. 70-71 of Exhibit A hereto,
15 the temporary restraining order should be modified to expressly
16 permit Armstrong to be available, if he wishes, as a defense
17 resource in Yanny II and to be prepared for testimony outside of
18 the presence of Scientology, again if he wishes.

19 It is outrageous that Scientology should allege that Yanny
20 represented Armstrong and then obtain a T.R.O., in a different
21 lawsuit, to prevent Armstrong from assisting in the defense of
22 Yanny.

23 //

24 //

25 //

26 //

27 //

28 //

1 VI. CONCLUSION

2 For the foregoing reasons, the temporary restraining order
3 should be either lifted or specifically tailored to permit
4 Armstrong to assist Yanny in the preparation of Yanny II for trial
5 on May 18, 1992. After all, Armstrong is the second cause of
6 action in Yanny II.

7
8 Dated: May 4, 1992.

LEWIS, D'AMATO, BRISBOIS & BISGAARD
DAVID B. PARKER
GRAHAM E. BERRY
JAYESH PATEL

9
10
11 By: 

GRAHAM E. BERRY

12 Attorneys for Defendants
13 JOSEPH A. YANNY, an individual, and
14 JOSEPH A. YANNY, a Professional
15 Corporation
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

TABLE OF CONTENTS

Page

I.	<u>INTRODUCTION</u>	2
II.	<u>THE CLASH OF JUDICIAL ORDERS</u>	3
III.	<u>SUMMARY OF ARGUMENT</u>	4
IV.	<u>FACTUAL BACKGROUND.</u>	6
A.	<u>SCIENTOLOGY</u>	6
B.	<u>YANNY</u>	9
C.	<u>ARMSTRONG</u>	10
D.	<u>ARMSTRONG I</u>	11
E.	<u>THE ARMSTRONG SETTLEMENT</u>	11
F.	<u>THE AZNARANS</u>	13
G.	<u>YANNY I</u>	13
H.	<u>YANNY II</u>	15
I.	<u>ARMSTRONG I REVISITED</u>	17
J.	<u>SCIENTOLOGY TRIES TO PREVENT ARMSTRONG FROM TESTIFYING IN YANNY II</u>	18
K.	<u>ARMSTRONG II -- THE ORGANIZATION STRIKES BACK</u>	18
L.	<u>FACTUAL CONCLUSION</u>	19
V.	<u>ARMSTRONG II SHOULD BE DISMISSED ON JURISDICTIONAL GROUNDS.</u>	20
A.	<u>LOS ANGELES SUPERIOR COURT HAS THE PROPER JURISDICTION.</u>	20
B.	<u>JUDGE GEERNAERT SIMPLY FOUND THAT HE DID NOT HAVE JURISDICTION TO ENFORCE THE AGREEMENT WHICH HE NEVER HAD BEFORE HIM.</u>	22
C.	<u>BLATANT FORUM SHOPPING</u>	25
VI.	<u>ARMSTRONG II SHOULD BE DISMISSED ON COLLATERAL ESTOPPEL GROUNDS.</u>	26

VII. <u>INJUNCTIVE RELIEF SHOULD BE DENIED.</u>	28
A. <u>OTHER REMEDIES ARE ADEQUATE AND THERE IS NO IRREPARABLE HARM.</u>	29
B. <u>THERE WILL BE NO MULTIPLICITY OF JUDICIAL PROCEEDINGS</u>	30
C. <u>SCIENTOLOGY CANNOT SUCCEED ON THE MERITS AT TRIAL.</u>	31
1. <u>No Sufficient Consideration Exists.</u>	31
a. <u>The Consideration is Illegal.</u>	32
(i) <u>The Agreement is contrary to public policy.</u>	32
(ii) <u>The Agreement obstructs the administration of justice.</u>	42
(iii) <u>The Agreement is an improper restraint of trade.</u>	43
b. <u>There is a Lack of Mutuality.</u>	44
2. <u>Armstrong Had No Freedom of Consent.</u>	46
a. <u>Duress.</u>	46
b. <u>Armstrong's Attorney Had a Conflict of Interest With Both Armstrong and a Number of the Other Settling Parties.</u>	51
c. <u>Fraud.</u>	54
(i) <u>Actual fraud exists.</u>	54
(ii) <u>Constructive fraud exists.</u>	56
3. <u>The Proposed Preliminary Injunction is Contrary to Armstrong's and Yanny's Constitutional Rights.</u>	57
a. <u>Freedom of Religion</u>	57
b. <u>Freedom of Speech</u>	57
c. <u>Freedom of Association</u>	58
d. <u>Freedom of Occupation</u>	59
4. <u>The Injunction Would Bar Lawful Activity.</u>	59

1	D.	<u>THE EQUITIES DO NOT TIP IN PLAINTIFF'S FAVOR.</u>	60
2	E.	<u>EQUITABLE DEFENSES EXIST TO PLAINTIFF'S REQUEST FOR</u>	
3		<u>INJUNCTIVE RELIEF.</u>	61
4	1.	<u>Laches.</u>	61
5	2.	<u>Unclean Hands.</u>	61
6	3.	<u>The Interests of Third Persons and the Public</u>	
7		<u>Are Involved.</u>	63
8	VIII.	<u>PLAINTIFF'S PRELIMINARY INJUNCTION WOULD CRIPPLE</u>	
9		<u>THE DEFENSE OF YANNY IN YANNY II.</u>	64
10	IX.	<u>PLAINTIFF'S PRELIMINARY INJUNCTION IS AN END RUN AROUND THE</u>	
11		<u>ADVERSE YANNY II DECISION AND WOULD VIOLATE JUDGE CARDENAS'</u>	
12		<u>EXPRESS ORDER.</u>	66
13	X.	<u>THIS COURT CANNOT ORDER THE SPECIFIC PERFORMANCE OF THE</u>	
14		<u>AGREEMENT BY WAY OF PRELIMINARY INJUNCTION</u>	68
15	XI.	<u>PLAINTIFF'S PRELIMINARY INJUNCTION SHOULD EITHER BE</u>	
16		<u>DENIED OR SPECIFICALLY TAILORED TO EXPRESSLY PERMIT</u>	
17		<u>ARMSTRONG TO ASSIST IN THE DEFENSE OF YANNY IN YANNY</u>	
18		<u>II.</u>	70
19	XII.	<u>CONCLUSION.</u>	71

TABLE OF AUTHORITIES

FEDERAL CASES

<u>Church of Scientology v. Commissioner of Internal Revenue</u> (1984) 83 U.S. Tax Ct. Rpts. 381, 429-42	7,8,65
<u>Precision Co. v. Automotive Co.</u> 324 U.S. 806 (1944)	37,38
<u>United States v. Hubbard</u> (1979) 474 F. Supp. 64	7,8,65
<u>United States v. Kattar</u> (1st Cir. 1988) 840 F.2d 118	8,65
<u>Van Schaick v. Church of Scientology</u> (U.S.D.C. Mass. 1982) 535 F. Supp. 1125	8,65

STATE CASES

<u>Allard v. Church of Scientology</u> (1976) 58 Cal. App. 3d 439, 129 Cal. Rptr. 797	8,65
<u>Allen v. Jordanos' Inc.</u> (1975) 52 Cal. App. 3d 160, 125 Cal. Rptr. 31	34,35,40,64
<u>Balling v. Finch</u> (1962) 203 Cal. App. 2d 413, 21 Cal. Rptr. 490	46,47
<u>Beard v. Beard</u> (1884) 65 Cal. 354, 4 P. 229	34
<u>Beynon v. Garden Grove Medical Group</u> (1980) 100 Cal. App. 3d 698	70
<u>Bianco v. Superior Court</u> (1968) 265 Cal. App. 2d 126, 131, 71 Cal. Rptr. 322	39
<u>Bleecher v. Conte</u> (1981) 29 Cal. 3d 345, 213 Cal. Rptr. 852 . .	44
<u>Bovard v. American Horse Enterprises, Inc.</u> (1988) 201 Cal. App. 3d 832, 838, 247 Cal. Rptr. 340.	32,40
<u>Brown v. Freese</u> (1938) 28 Cal. App. 2d 608, 618, 83 P.2d 82 . .	35
<u>Burton v. Sosinsky</u> (1988) 203 Cal. App. 3d 562, 573, 250 Cal. Rptr. 33	61
<u>Bush v. California Conservation Corps</u> (1982) 136 Cal. App. 3d 194, 185 Cal. Rptr. 892	29
<u>Carnation Co. v. El Rey Cheese Co.</u> (1948) 88 Cal. App. 2d 857, 200 P.2d 19	20

1	<u>Carruth v. Superior Court</u> (1978) 80 Cal. App. 3d 215, 223, 145 Cal. Rptr. 344	21
2	<u>Christofferson Co. v. El Rey Cheese Co.</u> (1948) 88 Cal. App. 2d 857, 200 P.2d 19	8,65
3	<u>Church of Scientology v. Armstrong</u> (1991) 232 Cal. App. 3d	8,10,17,62,64,65
4	<u>Cotton v. Bennett</u> (1963) 14 Cal. App. 2d 709, 29 Cal. Rptr. 715	25
5	<u>Credit Bureau v. Clark</u> (1950) 98 Cal. App. 2d 479, 220 P.2d 596	20
6	<u>De Rosa v. Transamerica Title Ins. Co.</u> (1989) 213 Cal. App. 3d 1390, 262 Cal. Rptr. 370	61
7	<u>Doe v. Culverwell</u> (1868) 35 Cal. 291	44
8	<u>First National Bank v. Thompson</u> (1931) 212 Cal. 388	41
9	<u>Ford v. Shearson Lehman American Express</u> (1986) 180 Cal. App. 3d 1011, 225 Cal. Rptr. 895	56
10	<u>Fritz v. Thompson</u> (1954) 125 Cal. App. 2d 858, 271 P.2d 205	31
11	<u>Gross v. Needham</u> (1960) 184 Cal. App. 2d 446, 7 Cal. Rptr. 664	46
12	<u>Hagan v. Gilbert</u> (1948) 83 Cal. App. 2d 570, 189 P.2d 548	20
13	<u>Harding v. Robinson</u> (1917) 175 Cal. 534, 166 P.808	54
14	<u>Harlan v. Gladding, McBean & Co.</u> (1907) 7 Cal. App. 49, 93 P. 400	46
15	<u>Harper v. Goldschmidt</u> (1909) 156 Cal. 245, 104 P. 451	44
16	<u>In Re Gideon</u> (1958) 157 Cal. App. 2d 133, 320 P.2d 599	25
17	<u>Johnson v. Banta</u> (1948) 87 Cal. App. 2d 907, 909, 198 P.2d 100	20
18	<u>Keithley v. Civil Service Board</u> (1970) 11 Cal. App. 3d 443, 89 Cal. Rptr. 809	46
19	<u>Larwin-Southern Calif. v. JGB Inv. Co.</u> (1979) 101 Cal. App. 3d 626, 162 Cal. Rptr. 52	44
20	<u>Lewis v. Fahn</u> (1952) 113 Cal. App. 2d 95, 247 P.2d 831	46,47
21	<u>Loma Portal Civic Club v. American Airlines, Inc.</u> (1964) 61 Cal. 2d 582, 39 Cal. Rptr. 708	63

1	<u>Long Beach Drug Co. v. United Drug Co.</u> (1939) 13 Cal. 2d 158, 171, 88 P.2d 698	69,70
2	<u>Lyons v. Brunswick-Balke-Collender Co.</u> (1942) 20 Cal. 2d 579, 582, 127 P.2d 924	21
3	<u>Mailand v. Burckle</u> (1978) 20 Cal. 3d 367, 143 Cal. Rptr. 1 . . .	70
4	<u>Main v. Merrill Lynch</u> (1977) 67 Cal. App. 3d 19, 136 Cal. Rptr. 378	56
5	<u>Mary R. v. B. & R. Corp.</u> (1983) 149 Cal. App. 3d 308, 196. Cal. Rptr. 871	38,39
6	<u>Maryland C. Co. v. Fidelity & Cas. Co. of N.Y.</u> (1925) 71 Cal. App. 492	33,34,39,40
7	<u>Mattei v. Hopper</u> (1958) 51 Cal. 2d 119, 330 P.2d 625	44
8	<u>McCormick v. Woodmen of the World</u> (1922) 57 Cal. App. 568, 207 P. 943	34
9	<u>McFate v. Bank of America</u> (1932) 125 Cal. App. 683, 14 P.2d 146	56
10	<u>McKune v. McKune</u> (1920) 48 Cal. App. 204, 191 P. 958	21
11	<u>Moklofsky v. Moklofsky</u> (1947) 79 Cal. App. 2d 259, 262, 179 P.2d 628	69
12	<u>Moore v. Heron</u> (1930) 108 Cal. App. 705, 711, 292 P. 136	69
13	<u>Morey v. Paladini</u> (1922) 187 Cal. 727, 203 P. 760	40
14	<u>Moriarty v. Carlson</u> (1960) 184 Cal. App. 2d 51, 55, 7 Cal. Rptr. 282)	62
15	<u>Newman v. Sonoma</u> (1961) 56 Cal. 2d 625, 628, 15 Cal. Rptr. 914	21
16	<u>O'Brien v. O'Brien</u> (1911) 16 Cal. App. 103, 116 P. 692	21
17	<u>Owens v. Haslett</u> (1950) 98 Cal. App. 2d 829, 221 P.2d 252	41
18	<u>Pacific Elec. Ry. Co. v. Campbell-Johnston</u> (1908) 153 Cal. 106, 113, 94 P. 623	69
19	<u>People ex rel. Gow v. Mitchell Bros.</u> (1981) 118 Cal. App. 3d 863, 173 Cal. Rptr. 476	29
20	<u>People v. Dean Richard Pic'l</u> (1982) 31 Cal. 3d 731, 183 Cal. Rptr. 685	42

1	<u>People v. Kelley</u> (1977) 70 Cal. App. 3d 418, 138 Cal. Rptr. 681	59
2	<u>People v. Landon White Bail Bonds</u> (1991) 234 Cal. App. 3d 66, 285 Cal. Rptr. 575	24, 25
3	<u>People v. Rodriguez</u> (1984) 160 Cal. App. 3d 650, 206 Cal. Rptr. 79	26
4	<u>People v. Sims</u> (1982) 32 Cal. 3d 468, 186 Cal. Rptr. 77	26
5	<u>Pitts v. Highland Construction Co.</u> (1953) 115 Cal. App. 2d 206, 252 P.2d 14	70
6	<u>Pond v. Ins. Co. of North America</u> (1984) 151 Cal. App. 3d 280, 198 Cal. Rptr. 517	62
7	<u>Poultry Producers, etc. v. Barlow</u> (1922) 189 Cal. 278, 289, 208 P. 93	69
8	<u>Re B and G (Minors) (Custody)</u> [1985] FLR 134	64
9	<u>Re B and G (Minors) (Custody)</u> FLR 493, [1985] Fam. Law 127 . .	65
10	<u>Re B and G (Wards)</u> [1985] Fam. Law 58	2, 66
11	<u>Robbins v. Superior Court</u> (1985) 38 Cal. 3d 199, 211 Cal. Rptr. 398	60
12	<u>Roff v. Crenshaw</u> (1945) 69 Cal. App. 2d 536, 159 P.2d 661 . . .	20
13	<u>Roraback v. Roraback</u> (1940) 38 Cal. App. 2d 592, 101 P.2d 772	25
14	<u>Safeway Stores v. Hotel Clerks etc. Association</u> (1953) 41 Cal. 2d 567, 575, 261 P.2d 721	32
15	<u>San Francisco Newspaper Printing Co. v. Superior Court</u> (1985) 170 Cal. App. 3d 438, 216 Cal. Rptr. 462	31
16	<u>Sheehan v. Vedder</u> (1930) 108 Cal. App. 419, 292 P. 175	69
17	<u>Sistrom v. Anderson</u> (1942) 51 Cal. App. 2d 213, 124 P.2d 372	46
18	<u>Steffen v. Refrigeration Discount Corp.</u> (1949) 91 Cal. App. 2d 494, 205 P.2d 727	46
19	<u>Stone v. Everts</u> (1928) 203 Cal. 197, 263 P. 236	21
20	<u>Symcox v. Zuk</u> (1963) 221 Cal. App. 2d 383, 34 Cal. Rptr. 462	70
21	<u>Takeuchi v. Schmuck</u> , 206 Cal. 782, 786, 276 P. 345	41

1	<u>Tallman v. Tallman</u> (1964) 29 Cal. App. 2d 39, 39 Cal. Rptr. 863	25
2	<u>Tappan v. Albany Brewing Co.</u> (1989) 80 Cal. 570, 22 P. 25,36,39,40	
3	<u>Tatterson v. Kehrlein</u> , 88 Cal. App. 34, 49, 263 P. 285	41
4	<u>Taylor v. Lundblade</u> (1941) 43 Cal. App. 2d 638, 111 P.2d 344	20
5		
6	<u>Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.</u> (1967) 255 Cal. App. 2d 300, 63 Cal. Rptr. 148	29,69
7	<u>Tiedje v. Aluminum Paper Milling Co.</u> (1956) 46 Cal. 2d 450, 296 P.2d 554	40,41
8		
9	<u>Turner v. Simpson</u> (1949) 91 Cal. App. 2d 590, 205 P.2d 423	20
10	<u>Ulene v. Jacobson</u> (1962) 209 Cal. App. 2d 139, 26 Cal. Rptr. 257	71
11		
12	<u>Valentine v. Stewart</u> (1860) 15 Cal. 387, 404	36
13	<u>Wadleigh v. Phelps</u> (1905) 147 Cal. 541, 542, 82 P. 200	21
14	<u>Wells v. Zenz</u> (1927) 83 Cal. App. 137, 256 P. 484	55
15	<u>Western Greyhound Lines v. Superior Court</u> (1958) 165 Cal. App. 2d 216, 331 P.2d 793	25
16	<u>Whipple Road Quarry Co. v. L.C. Smith Co.</u> (1952) 114 Cal. App. 2d 214, 216, 249 P.2d 854	69
17		
18	<u>Williamson v. Superior Court</u> (1978) 21 Cal. 3d 829, 148 Cal. Rptr. 39	35,36,37,64
19	<u>Williamson & Vollmer Engineering v. Sequoia Ins. Co.</u> (1976) 64 Cal. App. 3d 261, 134 Cal. Rptr. 427	54
20		
21	<u>Wolfe v. Severns</u> (1930) 109 Cal. App. 476, 293 P. 156	54
22	<u>Wollersheim v. Church of Scientology</u> (1989) 212 Cal. App. 3d 872, 260 Cal. Rptr. 331	8,65
23	<u>Youngblood v. Wilcox</u> (1989) 207 Cal. App. 3d 1368, 255 Cal. Rptr. 527	61
24		

STATUTES AND RULES

26	Business and Professions Code, Section 16600	43
27	Cal. Civ. Code §1550	31,32

1	Cal. Civ. Code §1569(1) and (3)	46
2	Cal. Civ. Code §1572(3)	54
3	Cal. Civ. Code §1572(5)	55
4	Cal. Civ. Code §1573	56
5	Cal. Civ. Code §1595	32
6	Cal. Civ. Code §1596	32
7	Cal. Civ. Code §1598	70
8	Cal. Civ. Code §1599	70
9	Cal. Civ. Code §1607	32
10	Cal. Civ. Code §1608	70
11	Cal. Civ. Code §3423(5)	69
12	Cal. Civ. Proc. Code §395	20,21
13	Cal. Civ. Proc. Code 526	28,29,30,69
14	Cal. Evid. Code §1027	42
15	Penal Code §§ 136, 136 1/2, 137, 138	42
16	Rules of Professional Conduct, Rule 5-102	51
17	<u>MISCELLANEOUS</u>	
18	Jon Atack, A Piece of Blue Sky, Scientology, Dianetics,	
19	L. Ron Hubbard Exposed	6,7,10,53
20	2 Cal. Crimes, Text and Supp., §§815, 816	42
21	14 Cal. Jur. 3d, Contracts §95 (1974)	31,44
22	14 Cal. Jur. 3d, Contracts §98 (1974)	45
23	14 Cal. Jur. 3d, Contracts §110 (1974)	70
24	Mallen and Smith, <u>Legal Malpractice</u> , Vol. 2, § 50, 51, 713	
25	(3d ed.)	26
26	Restatement 2d, Contracts §79(c)	45
27	Restatement 2d, Contracts §186	43
28	Restatement (Second) of Torts §933 (Reporter's Note)	29

1	1 Witkin, <u>Summary of California Law</u> §207 (9th ed. 1987)	31
2	1 Witkin, <u>Summary of California Law</u> §219 (9th ed. 1987)	32
3		
4	1 Witkin, <u>Summary of California Law</u> §229 (9th ed. 1987)	45
5		
6	1 Witkin, <u>Summary of California Law</u> §393 (9th ed. 1987)	54
7	1 Witkin, <u>Summary of California Law</u> §398 (9th ed. 1987)	54
8		
9	1 Witkin, <u>Summary of California Law</u> §417 (9th ed. 1987)	47
10	1 Witkin, <u>Summary of California Law</u> §429, 430 (9th ed. 1987)	70
11		
12	1 Witkin, <u>Summary of California Law</u> §462 (9th ed. 1987)	32

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

"The purpose of this suit is to harass and discourage rather than to win. The Law can be used very easy to harass, and enough harassment on somebody who is simply on the thin edge anyway . . . will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly.

L. Ron Hubbard, The Scientologist: A Manual on the Dissemination of Material, March, 1955¹

Scientology lost the litigation captioned Church of Scientology of California v. Gerald Armstrong ("Armstrong I") L.A.S.C. No. C 420153, Scientology v. Armstrong (1991) 282 Cal.App.3d 1060 and Religious Technology Center, et al. v. Joseph A. Yanny ("Yanny I") L.A.S.C. No. C690211. Scientology now strikes back with Yanny II² and Armstrong II³

Scientology filed Yanny II on July 18, 1992. The second cause of action alleges that Yanny improperly provided legal representation to Armstrong. Scientology filed Armstrong II on February 4, 1992. All of Scientology's charging allegations in Armstrong II involve Armstrong's alleged assistance to Mr. Yanny and Vicki and Richard Aznaran in July and August, 1991. Six months later, in Armstrong II, Scientology now seeks to enjoin Armstrong from assisting Yanny in his defense of Yanny II. This brief addresses the factual and legal reasons why this Court should not grant such relief and so cripple the defense of

¹ Also see Re B and G (Wards), [1985] Fam. Law 58, page 56; Appendix of Authorities, Tab 3.

² L.A.S.C. No. BC 033035.

³ Marin County S.C. No. 152229

1 Yanny II.

2
3 II. THE CLASH OF JUDICIAL ORDERS.

4 At the heart of Yanny's opposition to the proposed
5 preliminary injunction in Armstrong II is a clash between an
6 express ruling of Judge Cardenas in Yanny II and the proposed
7 preliminary injunction in Armstrong II.

8 On August 6, 1991, Hon. Raymond Cardenas entered a
9 preliminary injunction in Yanny II. Because Yanny denied he
10 represented Armstrong, the judge held that "Yanny should not be
11 caused to complain for a preliminary injunction that prevents him
12 from representing Armstrong." However, the judge was careful to
13 make the injunction very narrow:

14 "The court has narrowed the injunction . . . the general
15 import of this preliminary injunction is not to preclude
16 association. It's not to preclude employment. . . it's not
17 to preclude Yanny's religious activities . . . and it is not
18 an attempt by this Court to restrain association, but
19 rather, it's a limited injunction that prevents
20 representation . . .

21 It is not an order that precludes [Yanny] from gathering
22 evidence in support of his case against the plaintiffs, nor
23 does it preclude him from talking to potential witnesses for
24 his case . . ."

25 Reporters Transcript, August 6, 1991. Berry Dec., Exh. A.

26 On March 3, 1992, Scientology obtained a temporary
27 restraining order against Armstrong. The order was only issued to
28 preserve the status quo. Scientology's counsel, Mr. Wilson,

1 stated that he was seeking to prevent Armstrong from:

2 "1. Disclosing the contents of the settlement agreement;
3 and

4 2. Actively aiding persons engaged in litigation adverse
5 to the Church of Scientology; and

6 3. Disclosing experiences that he had while he was a
7 member of the Church of Scientology; and

8 4. Disclosing certain knowledge that Mr. Armstrong may
9 have had of the life and people related to Mr. L. Ron Hubbard."

10 Reporters Transcript, March 3, 1992: pages 11-12. Berry
11 Dec. Exh. B.

12 On February 28, 1992 and March 13, 1992 Yanny requested
13 Scientology to release Armstrong from the restrictive settlement
14 provisions so that he could assist Yanny in his defense in Yanny
15 2. Scientology has ignored these requests. Berry Decl. Exh. C.

16
17 III. SUMMARY OF ARGUMENT

18 This brief, in opposition to Scientology's proposed
19 preliminary injunction in Armstrong II, is based on the following
20 arguments:

21 (1) That Armstrong II should be dismissed on jurisdictional
22 grounds because: (a) the Los Angeles Superior Court has the proper
23 jurisdiction; (b) Judge Geernaert simply found that he did not
24 have jurisdiction to enforce the Agreement which he never had
25 before him; and (c) Scientology has engaged in blatant forum
26 shopping by filing Armstrong II in Marin County (see infra V);

27 (2) That Armstrong II should be dismissed on collateral
28 estoppel grounds (see infra VI);

1 (3) That injunctive relief should be denied because: (a)
2 other remedies are adequate and there is no irreparable harm; (b)
3 there will be no multiplicity of judicial proceedings if
4 injunctive relief is denied; (c) Scientology cannot succeed on the
5 merits at trial; (d) the equities do not tip in Scientology's
6 favor; and (e) equitable defenses exist to plaintiff's request for
7 injunctive relief (see infra VII);

8 (4) That plaintiff's preliminary injunction would cripple
9 the defense of Yanny in Yanny II (see infra VIII);

10 (5) That plaintiff's preliminary injunction is an end run
11 around the narrow Yanny II injunction and would violate Judge
12 Cardena's express order (see infra IX);

13 (6) That this court cannot order specific performance of
14 the Agreement by way of preliminary injunction (see infra X);

15 (7) That plaintiff's preliminary injunction should either
16 be denied or specifically tailored to expressly permit Armstrong
17 to assist in the defense of Yanny in Yanny II (see infra XI).
18
19
20
21
22
23
24
25
26
27
28

1 IV. FACTUAL BACKGROUND ⁴

2 A. SCIENTOLOGY ⁵

3 [T]he only way you can control people is to lie to
4 them" ... "the second you start telling anybody close
5 to the truth you start releasing him and he gets
6 tougher and tougher to control ... you cannot control
7 somebody wihtout telling them a bunch of lies." L. Ron
8 Hubbard, On Control and Lying, Technique No. 88.⁶

9 The Church of Scientology was first incorporated in 1953.⁷
10 Its founder, L. Ron Hubbard, was described by Judge Breckenridge
11 as "virtually a pathological liar."⁸ Hubbard started a religion
12 "because that was where the money was."⁹ It has since been
13 embroiled in worldwide litigation and criminal investigations.
14 The Australian government banned the practice of Scientology for a
15 number of years. The British government conducted a parliamentary
16

14 ⁴ "The White Rabbit put on his spectacles. 'Where shall I
15 begin, please your Majesty?' he asked. 'Begin at the
16 beginning,' the King said, very gravely, 'and go on till you
17 come to the end: then stop.'" Lewis Carroll, Alice's
18 Adventures in Wonderland.

17 It is almost impossible to provide the court with a full
18 factual background short of writing a multi-volume book.
19 This litigation story is just too big to be easily
20 susceptible to synthesis and reduction. Accordingly, we
21 have enclosed a selection of exhibits which tell the story
22 more fully, and provide overwhelming evidence why
23 Scientology's request for equitable relief herein should
24 be denied.

21 ⁵ See generally: Atack, A Piece of Blue Sky: Scientology,
22 Dianetics and L. Ron Hubbard exposed, Lyle Stuart 1990;
23 Corydon, Messiah Madman; Miller, Barefaced Messiah.

24 ⁶ Berry Decl. Ex. D.

25 ⁷ For a description of Scientology see Berry Dec., Ex. G.

26 ⁸ Church of Scientology v. Armstrong (Armstrong I; Memorandum
27 of Intended Decision, 8:25. Berry Decl. Ex. F).

28 ⁹ Berry Decl., Ex. F, p. 137..

1 commission of enquiry. So did the French government.¹⁰

2 In 1979 the United States government imprisoned Hubbard's
3 wife, and a large number of senior Scientology officials, for many
4 major felonies including the burglary and infiltration of amny
5 government departments, intercepting oral communications,
6 obstructing justice, harboring fugitives and making false
7 declarations before the grand jury. The Scientology defendants
8 signed a 284 page stipulation of evidence that is a devastating
9 indictment of what is obviously a criminal enterprise. Berry
10 Decl., Exh. BB. Scientology's illegal activities are also
11 detailed in Church of Scientology v. Commissioner of Internal
12 Revenue (1984) 83 U.S. Tax Ct. Rpts. 381. 429-42, and United
13 States v. Hubbard (1979) 474 F.Supp. 64, 70-77, 79, 83-84.
14 Appendix of Authorities, Exs 7 and 8.¹¹

15 In 1984 the Canadian government filed charges against the
16 Church of Scientology, Church of Scientology officials and former
17 Scientology members alleging, inter alia, conspiracy to commit
18 murder. Scientology has also been the subject of criminal
19 investigations and prosecutions in other countries such as Spain
20 and Italy.¹²

21 One of the most chilling Scientology practices is the Fair
22
23

24 ¹⁰ Berry Decl., Ex. E. 8:7-18.

25 ¹¹ Also see Berry Decl. Ex. V-AA.

26 ¹² Indeed, by 1988 over 70 Scientologists had been arrested in
27 both Spain and Italy including the President of the Church
28 of Scientology International. Atack, A Piece of Blue Sky,
pp. 362-363.

1 Game Doctrine which a number of courts have recognized.¹³
2 Armstrong is still being subjected to its application.¹⁴ For
3 example, in 1984 Scientology enlisted a Los Angeles police
4 officer, Phillip Rodriguez, to "investigate" Armstrong.
5 Videotapes were made and introduced into evidence. Christofferson
6 v. Church of Scientology, (1982) 57 Ore. App. 203, 644 P.2d 577.
7 The presiding judge commented that the videotapes "[were]
8 devastating against the Church . . . [and bordered' on
9 entrapment." Los Angeles Police Chief Daryl F. Gates later
10 publicly denied that the investigation was officially sanctioned
11 and suspended Officer Rodriguez for his part in the Scientology
12 investigation of Armstrong. Other examples of Scientology's
13 illegal actions against Armstrong are given in his various
14 declarations filed separately herewith. They have also been
15 reported by the Los Angeles Times and Time magazine. Furthermore,
16 they continue to this day. Armstrong's attorney, Michael Flynn,

17 ¹³ The Second District has determined that Armstrong was
18 subjected to Scientology's Fair Game Doctrine "which permits
19 a suppressive person to be tricked, sued or lied to or
20 destroyed ... [or] deprived of property or injured by any
21 means by any Scientologist. . ." Church of Scientology
22 v. Armstrong (1991) 232 Cal.App.3d 1060, 1067. See Also
23 Wollersheim v. Church of Scientology (1989) 212 Cal.App.3d
24 872, 888-91, 260 Cal.Rptr. 331; Allard v. Church of
25 Scientology (1976) 58 Cal.App.3d 439, 443 n.1, 129 Cal.Rptr.
26 797; United States v. Katter (1st Cir. 1988) 840 F.2d 118,
27 125; Van Schaich v. Church of Scientology (U.S.D.C. Mass.
28 1982) 535 F. Supp. 1125, 1131 n.4; Christofferson v. Church
of Scientology (1982) 57 Ore. App. 203, 644 P.2d 577, 590
-92. Some of Scientology's other illegal activities are
described in Church of Scientology v. Commissioner of
Internal Revenue (1984) 83 U.S. Tax Ct. Rptrs. 381, 429-42;
United States v. Hubbard (1979) 474 F.Supp. 64, 70-77, 79,
83-84. See Appendix of Authorities filed herewith.

¹⁴ Berry Decl., Ex. H.

1 was also subjected to the Fair Game Doctrine.¹⁵

2 In 1987, Scientology published a document which stated "If
3 you oppose Scientology, we will promptly look up -- and will find
4 and expose your crimes ... If you leave us alone we will leave you
5 alone. It's very simple. Even a fool can grasp that. And don't
6 underrate our ability to carry it out ... those who try to make
7 life difficult for us are at once at risk."

8
9 B. YANNY

10 Yanny was a Scientology lawyer from mid 1983 to late 1987.
11 He was retained by Vicki Aznaran who was head of Religious
12 Technology Center ("RTC") which is the controlling Scientology
13 corporate entity. RTC owns most of Scientology's money earning
14 trademarks and copyrights. In Yanny II, Scientology alleges that
15 Yanny, as a Scientology lawyer, had wide ranging responsibilities
16 with regard to the organization's ecclesiastical, corporate,
17 financial and legal affairs.

18 Over time Yanny became repulsed by the colossal magnitude of
19 Scientology's criminal and anti-social activities. In mid-1987 he
20 was representing Scientology in certain litigation which included
21 Wollersheim v. Church of Scientology. Charles O'Reilly was one of
22 the defense counsel. A meeting took place between Yanny,
23 Scientology officials and private detectives where the
24 blackmailing of Charles O'Reilly, Esq., was discussed along with a
25
26

27 ¹⁵ See the various Flynn Declarations filed separately
28 herewith.

1 plan to steal O'Reilly's medical records from the Betty Ford
2 clinic.¹⁶ Yanny told the Scientology officials that they were
3 "crazy" and he refused to have anything to do with plaintiffs'
4 campaign of harassment and intimidation against opposing counsel.
5 He had earlier been consulted with regard to the Flynn settlement
6 agreements of which the Armstrong agreement is one. Yanny had
7 told plaintiffs that these agreements were unethical and/or
8 illegal and he refused to have anything to do with them. In late
9 1987 Yanny ceased representing Scientology.¹⁷

10
11 C. ARMSTRONG

12 Armstrong spent a major part of his life under the control
13 of Scientology. His horrifying experiences are detailed in his
14 various Declarations filed herewith.¹⁸ He is also discussed
15 repeatedly in John Atack's book "A Piece of Blue Sky --
16 Scientology, Dianetics and L. Ron Hubbard Exposed." Berry Decl.,
17 Ex. J.

18 On February 18, 1982 and April 22, 1982 Scientology issued a
19 "suppressive person declare Gerry Armstrong", charging him with
20 "crimes and high crimes and suppressives" against Scientology.
21 Thereafter Armstrong was subjected to Scientology's Fair Game
22

23 ¹⁶ Scientology also gave Yanny a document detailing the private
24 life of the judge's son. In addition, the judge's pet dog
25 was killed during the trial. For other examples of
26 Scientology's actions against judges see Berry Dec. Exhs.
27 I and J.

28 ¹⁷ Yanny has since been subjected to Scientology's Fair Game
29 Doctrine. Berry Decl. BB

¹⁸ Declarations of Gerald Armstrong separately filed herewith.

1 Doctrine with acts of harassment, intimidation and bodily threat
2 which continue through to this very day. Armstrong retained
3 Boston attorney Michael Flynn and together they became embroiled
4 in litigation by and against the organization. Flynn's
5 experiences through these years are also described in his various
6 declarations which are separately filed herewith.

7
8 D. ARMSTRONG I.

9 It is difficult to fully discuss the Armstrong I trial
10 record. The trial record is apparently sealed but the appellate
11 record is unsealed. Documents are floating around in various
12 other cases and hands. So are the trial transcripts. However,
13 the facts are described in Church of Scientology vs. Armstrong
14 (1991) 232 Cal.App.3d 1060. The trial court decision of Judge
15 Breckenridge is a damning indictment of Scientology in which he
16 found that it lacked clean hands with regard to Armstrong. Berry
17 Decl. Ex. E, 1:25-28. Armstrong successfully defended Armstrong I
18 and obtained judgment and costs against Scientology.

19
20 E. THE ARMSTRONG SETTLEMENT.

21 On December 6, 1986 Armstrong was part of a block
22 settlement. This is described by author John Atack. Berry Decl.
23 Ex. K, page 357. The Armstrong Settlement Agreement¹⁹ was a
24 morale and legal outrage. Yanny, as a Scientology lawyer, refused
25 to have anything to do with it. Armstrong's attorney Flynn said
26 it was "not worth the paper it was written upon". On December 23,

27
28 ¹⁹ Berry Decl. Exh. L.

1 1986, Judge Geernaert held that this agreement had never been
2 before Judge Breckenridge in Armstrong I and that Judge
3 Breckenridge would not have signed it. Berry Decl. Ex. E 63:5-
4 15. Indeed, the Court's December 12, 1986 order proves that the
5 Settlement Agreement was never before the Court. Berry Decl. Exh.
6 N).

7 Furthermore, Scientology did not put the second settlement
8 agreement²⁰ before either Judge Geernaert or this court. In that
9 second settlement agreement the parties acknowledged that they had
10 "been subjected to intense, and prolonged harassment by the Church
11 of Scientology (throughout the litigation), and that the value of
12 the respective claims stated therein is measured in part by the
13 length and degree of harassment." Berry Decl. Exhibit M, p.4.

14 The second secret Settlement Agreement (Berry Dec. Exh. M)
15 was entered into by the settling plaintiffs, including Armstrong,
16 and their attorney Flynn. The egregious conflicts between the
17 plaintiffs and Flynn, and between the plaintiffs themselves, are
18 readily apparent from the face of the document. Notwithstanding,
19 the document has only one fleeting reference to consultations with
20 outside counsel. Berry Decl. Ex. M, p. 4.²¹ All of these
21 people, including their attorney, had been subjected to the most
22 outrageous deprivations, harassment and intimidation. Each should
23 have been separately represented in the settlement. None were.

24
25
26 ²⁰ Berry Decl. Ex. M.

27 ²¹ The Reporters' Transcript, December 11, 1986 makes no
28 reference to independent legal advice either. Berry Dec.,
Exh. P.

1 F. THE AZNARANS.

2 Vicki Aznaran was one of the highest ranking Scientology
3 executives. Scientology's imprisonment, and physical abuse of
4 Vicki Aznaran is described in Berry Decl. Ex. K. pp. 358-362. It
5 is described also in her Complaint. Berry Decl. Ex. R.

6 The Aznarans escaped from Scientology's desert prison and
7 eventually found their way to their old friend and attorney Mr.
8 Yanny.²² He was appalled when he heard their story and helped
9 them find an attorney to file a lawsuit in 1988. Berry Decl. Ex.
10 S, pp. 5-7. That lawsuit is still pending.

11
12 G. YANNY I

13 Yanny I started with a fee dispute. Scientology owed Mr.
14 Yanny fees which they refused to pay. Because of Scientology's
15 refusal to negotiate the matter, it became clear to Mr. Yanny that
16 he would have to litigate to recover his fees. At about this same
17 time, March 1988, the Aznarans were contemplating their litigation
18 against Scientology. They came to Los Angeles to look for
19 counsel. They were poor and needed help. Yanny offered to help
20 them by letting them stay at his home and introducing them to some
21 of the plaintiffs firms in the Los Angeles area. These simple,
22 humane gestures infuriated Scientology and led to Scientology's
23 pre-emptive strike in Yanny I. Scientology filed suit in Los
24 Angeles Superior Court and asserted nine causes of action: Breach
25 of Fiduciary Duty; Breach of Contract; Tortious Breach of the
26

27 ²² Scientology had previously requested Mr. Yanny to represent
28 Vicki Aznaran in a federal class action by former
Scientologist against Scientology.

1 Covenant of Good Faith and Fair Dealing; Constructive Fraud;
2 Fraud; Intentional Interference with Contract; Civil Conspiracy
3 and Conversion.

4 Plaintiffs also obtained a preliminary injunction in Yanny
5 I. In essence, Scientology was alleging that Mr. Yanny was
6 orchestrating a number of plaintiffs' lawsuits against
7 Scientology. Mr. Yanny cross-complained for his unpaid legal
8 fees. The trial was conducted during January, February, and March
9 of 1990. Initially, evidence was taken before the jury on both
10 equitable and legal issues. Scientology's claims for injunctive
11 relief expanded the scope of evidence to the point of
12 embarrassment to Scientology, even though the court surprisingly
13 excluded much highly relevant evidence as more prejudicial than
14 probative. Several weeks into the trial Scientology moved to
15 sever the billing dispute from the court matter of injunctive
16 relief. The jury trial proceeding on the billing claims, followed
17 by the court trial on the breach of fiduciary duty claims. The
18 jury returned a verdict in Mr. Yanny's favor and awarded judgment
19 of \$154,000 for his unpaid fees. Subsequently, the court also
20 found in Mr. Yanny's favor on the breach of fiduciary duty issues
21 and dissolved the preliminary injunction.

22 Predictably, Scientology has appealed the decision in Yanny
23 I although such matters as the trial transcript and reporter's
24 transcript on appeal have not yet been completed.

1 H. YANNY II ²³

2 In Yanny II plaintiffs display an incredible
3 misunderstanding of the "substantial relationship" test and plead
4 two claims of breach of fiduciary duty against Yanny. They seek
5 compensatory damages of more than \$1 million dollars. The facts
6 giving rise to Yanny II involve the Aznaran case and Armstrong.
7 Berry Decl. Exhibit S, pp. 5-11. Plaintiff's Second Cause of
8 Action alleges that Yanny has breached his fiduciary duty to
9 Scientology by representing Armstrong on "literary matters."
10 Berry Decl. Exhibit S 11:1-12. However, Scientology has
11 virtually no evidence to support its claims.²⁴

12 Scientology's initial application for a temporary
13 restraining order was rejected. However, Scientology then applied
14 to have the case transferred to Judge Cardenas who had heard the
15 Yanny I case. Judge Cardenas issued a preliminary injunction on
16 August 6, 1991. In pertinent part it provides that:

17 (d) Yanny shall not represent Armstrong directly
18 or indirectly in any legal proceeding against
19 plaintiffs without plaintiffs' prior written
20 consent or further court order;

21 (e) Yanny shall not initiate any legal proceeding
22 on behalf of Armstrong in any court of this state
23 or federal court of this state for Armstrong
24 against plaintiffs;

25 Judge Cardenas specifically stated that "Yanny denies that
26 he represents Armstrong, a fact which will be determined at trial.
27
28

25 ²³ The Yanny II Complaint and First Amended Answer are attached
26 to the Berry Declaration as Exs. T and U.

27 ²⁴ Indeed, their only evidence is the declaration of Kendrick
28 Moxon, one of plaintiff's attorney's herein who was an
unindicted co-conspirator in U.S. V. Hubbard. Berry Dec.,
Exh. CC.

1 Therefore, Yanny should not be caused to complain for preliminary
2 injunction that prevents him from representing Armstrong." Berry
3 Decl. Exh. A, 4:23-26.

4 In Yanny I the court had held that there was a priest
5 penitent relationship between Armstrong and Yanny. Accordingly,
6 Judge Cardenas held that he was imposing a narrow injunction.
7 Berry Decl. Exh. A, 6:14. He said "its not to preclude
8 employment. It's not to preclude Mr. Yanny's religious activities
9 . . . It is not an attempt by this Court to restrain association,
10 but rather, it's a limited injunction that precludes
11 representation of these two or three entities, the two Aznarans
12 and Mr. Armstrong, as lawyers in the case, or not representing him
13 as a lawyer, and not to do it directly or indirectly, such as
14 through another lawyer. Berry Decl. Ex. A, 6:20-28. Judge
15 Cardenas also held that ("it is not an order that precludes him
16 form gathering evidence in support of his case against the
17 plaintiff, nor does it preclude him from talking to potential
18 witnesses for his case, should there be one.)" Berry Decl. Ex.
19 A, 8:28-9:3.

20 Judge Cardenas continued:

21 "The order is made this morning on the premise that
22 Mr. Yanny denies that he represents Armstrong, and if
23 that's the case, he is not harmed in the interim by
24 it, but the comments made are intended to give some
25 insight that I don't anticipate (nor will I look too
26 kindly on plaintiffs bringing defendant Yanny in here
27 for every, little claimed wronged, because that is not
28 the intent.") Berry Decl. Ex. A, 10:14-20.

1 I. Armstrong I Revisited

2 In Yanny II Scientology had not succeed in shutting down all
3 communication between Yanny and Armstrong. Accordingly, they made
4 a motion in Armstrong I. Except for the caption, the motion and
5 moving papers are identical to the motion and moving papers now
6 before this court in Armstrong II.²⁵ This motion was filed on
7 October 3, 1991, less than one month after Scientology lost its
8 collusive appeal in Church of Scientology v. Armstrong (1991) 232
9 Cal.App.3d 1060. Accordingly, we shall not explain it further.

10 Paragraph 20 of the Armstrong Settlement Agreement expressly
11 provided for the Los Angeles Superior Court to have jurisdiction
12 to enforce the agreement. However, in the interim, Judge
13 Breckenridge had retired. Accordingly, the Armstrong case was
14 transferred to Judge Geernaert who still retains jurisdiction over
15 the case. On December 23, 1991 Judge Geernaert denied
16 Scientology's motion on the ground that it required a full
17 evidentiary hearing. In addition, he made scathing remarks about
18 the unenforceability of the agreement. Berry Decl. Ex. E.
19 10:5:26, 12:22-13:10, 63:5-15.

20 The proper move for Scientology was to then make a motion
21 for reconsideration under CCP §1008(a), to take a writ or to file
22 a motion that would require a full evidentiary hearing on the
23 merits as suggested by Judge Geernaert. Berry Decl. Ex. E.
24 11:27-28. Scientology did none of that. Five months had passed
25 since the conduct they complained of there, and now here.

26
27
28 ²⁵ Berry Decl., Exh. DD.

1 J. SCIENTOLOGY TRIES TO PREVENT ARMSTRONG FROM TESTIFYING
2 IN YANNY II.

3 Scientology's next move was to file a Motion for Issue,
4 Evidentiary and Terminating Sanctions in Yanny II. Scientology
5 vainly argued that Armstrong should not be permitted to testify in
6 Yanny II because of his alleged failure to submit to their
7 deposition and refusal to answer their questions. If granted,
8 this motion would have prevented Armstrong from providing
9 testimony in a case where his alleged association with Yanny
10 constituted the Second Cause of Action. On January 31, 1992 Judge
11 Cardenas heard and denied Scientology's exclusionary motion
12 regarding Armstrong. Scientology retaliated that very same
13 afternoon.

14
15 K. ARMSTRONG II - THE ORGANIZATION STRIKES BACK.

16 Only hours after their motion to exclude Armstrong's
17 testimony in Yanny II was denied, Scientology struck back by
18 giving notice of an ex parte application and the commencement of
19 these proceedings in Marin County. This court refused
20 Scientology's request to conduct these proceedings in secret by
21 sealing the court file. However, the court did grant
22 Scientology's order to show cause re preliminary injunction.
23 Yanny then filed an ex parte application for leave to intervene
24 and oppose the preliminary injunction because it would have the
25 effect of preventing Armstrong from assisting Yanny in the
26 preparation of his defense in Yanny II. Scientology confirmed
27
28

1 this on the record ²⁶ on March 3, 1992 by stating that the
2 temporary restraining order would prevent Mr. Armstrong from:

- 3 1. Disclosing the contents of the Settlement Agreement;²⁷
- 4 2. Actively aiding persons engaged in litigation adverse to
- 5 the Church of Scientology;
- 6 3. Disclosing experiences that he had while he was a member
- 7 of the Church of Scientology;
- 8 4. Disclosing certain knowledge that Mr. Armstrong may have
- 9 of the life and people related to Mr. L. Ron Hubbard.

10 Accordingly, through the mouth of their own counsel,
11 Scientology establishes the need for the relief Yanny now seeks.
12 A decade after Scientology's litigation battle with Armstrong
13 began, it now elevates the clash to one of constitutional
14 proportions and tries to prohibit the exercise of Yanny's and
15 Armstrong's First Amendment Rights of Freedom of Speech,
16 Association and Religion.

17
18 L. FACTUAL CONCLUSION

19 Scientology now seeks relief which is barred by its unclean
20 hands and delay. If the relief is granted, it would give rise to
21 an enforcement nightmare and the prospect of constant Scientology
22 surveillance and intrusions into the private lives of Armstrong
23 and Yanny as it relentlessly sought to engineer grounds for contempt

24
25
26 ²⁶ Berry Dec. Ex. B, 10-11.

27 ²⁷ Despite the fact that Scientology had filed the Settlement
28 agreement and it was part of a public court file in this
and other courts.

1 and \$50,000 fines.²⁸ It is incredible that an organization that
2 claims to be so large, wealthy and powerful, is so paranoid about
3 mere conversations between two men. It is truly amazing that a
4 so-called religion has gone to such lengths to silence a former
5 member who devoted over 20 years of his life to serving it 24
6 hours a day. Indeed, one has to wonder about a religion that has
7 launched thousands of lawsuits around the world in an attempt to
8 suppress the truth and to silence those who leave it.

9
10 V. ARMSTRONG II SHOULD BE DISMISSED ON JURISDICTIONAL
11 GROUND.

12 A. LOS ANGELES COUNTY SUPERIOR COURT HAS THE
13 PROPER JURISDICTION.

14 The place of contracting, i.e., the place where the contract
15 was "entered into" or made, is a proper county in which to sue.
16 Cal. Civ. Proc. Code §395; Turner v. Simpson (1949) 91 Cal. App.
17 2d 590, 205 P.2d 423. See also Credit Bureau v. Clark (1950) 98
18 Cal. App. 2d 479, 220 P.2d 596; Carnation Co. v. El Rey Cheese Co.
19 (1948) 88 Cal. App. 2d 857, 200 P.2d 19; Hagan v. Gilbert (1948)
20 83 Cal. App. 2d 570, 575, 189 P.2d 548; Roff v. Crenshaw (1945) 69
21 Cal. App. 2d 536, 159 P.2d 661. The place of making is the place
22 where the last act necessary for its validity was done, usually
23 the act constituting the acceptance. Johnson v. Banta (1948) 87
24 Cal. App. 2d 907, 909, 198 P.2d 100; Taylor v. Lundblade (1941) 43
25 Cal. App. 2d 638, 111 P.2d 344. In the present case, the
26 Agreement was in fact executed and, thus, "entered into", in Los

27
28 ²⁸ Scientology's constant surveillance and harassment of both
Yanny and Armstrong has been well documented.

1 Angeles County. Accordingly, Los Angeles County is the proper
2 county in which to sue on the Agreement.

3 Furthermore, even though Section 395(a) also allows actions
4 on contract to be tried at defendants' residence, clearly, herein,
5 Armstrong waived his right to be tried on these claims in any
6 other county. Specifically, Armstrong's failure to comply with
7 the statutory requirements of service and filing of a notice of
8 motion for change of venue to Marin County in Armstrong I, is
9 equivalent to a consent to the venue in Los Angeles County
10 Superior Court, and a waiver of the right to change of venue. See
11 Wadleigh v. Phelps (1905) 147 Cal. 541, 542, 82 P. 200
12 ("application must be made at the time of his first appearance").
13 See also Newman v. Sonoma (1961) 56 Cal. 2d 625, 628, 15 Cal.
14 Rptr. 914; Lyons v. Brunswick-Balke-Collender Co. (1942) 20 Cal.
15 2d 579, 582, 127 P.2d 924. Accordingly, Los Angeles County is the
16 proper county in which to sue on the Agreement.

17 Moreover, if a change of venue to the place of defendant's
18 residence is proper, then defendant Armstrong, not Scientology,
19 has the right to move for such a change to the proper county by
20 filing a notice of motion for change and an affidavit showing that
21 he, as the moving defendant, is a resident of the county to which
22 transfer is sought, or is not a resident of the county in which
23 the suit is brought. See Stone v. Everts (1928) 203 Cal. 197, 263
24 P. 236; Carruth v. Superior Court (1978) 80 Cal. App. 3d 215, 223,
25 145 Cal. Rptr. 344; McKune v. McKune (1920) 48 Cal. App. 204, 191
26 P. 958; O'Brien v. O'Brien (1911) 16 Cal. App. 103, 116 P. 692.
27 However, Armstrong failed to exercise his right to move for such a
28 change and this failure constitutes a waiver of his right to such

1 a change and is equivalent to a consent of venue in Los Angeles
2 County Superior Court. Accordingly, Los Angeles County is the
3 proper county in which to sue on the Agreement.

4 In addition, Scientology's causes of action in Armstrong I
5 all relate to Armstrong's alleged breach of the Agreement. And,
6 as discussed above, these causes of action have been filed in Los
7 Angeles County Superior Court with Armstrong consenting to the
8 venue of the Los Angeles County Superior Court over these contract
9 claims. Because there has never been a final judgment on the
10 validity and enforceability of the Agreement, the Los Angeles
11 County Superior Court has retained jurisdiction insofar as the
12 claims relate to such validity and enforceability. See infra VB
13 and C. Accordingly, Los Angeles County is the proper county in
14 which to sue on the Agreement.

15
16 B. JUDGE GEERNAERT SIMPLY FOUND THAT HE DID NOT
17 HAVE JURISDICTION TO ENFORCE THE AGREEMENT
18 WHICH HE NEVER HAD BEFORE HIM.

19 On December 11, 1986, the Hon. Paul G. Breckenridge signed
20 the following Order Dismissing Action With Prejudice:

21 "Upon consideration of the parties' Stipulation for
22 Dismissal, the "mutual Release of All Claims and Settlement
23 Agreement" and the entire record herein, it is

24 ORDERED AND ADJUDGED:

- 25 1. That this action is dismissed with prejudice.
26 2. That an executed duplicate original of the
27 parties' "Mutual Release of All Claims and
28 Settlement Agreement" filed herein under seal

1 shall be retained by the Clerk of this Court under
2 seal."

3 Berry Decl., Ex. O. Thus, the only requirement of the Court,
4 pursuant to the above cryptic stipulated Order, is that the
5 Agreement be filed. The Court did not adopt the Agreement as an
6 order or judgment because it never had the Agreement before it.
7 In fact, on December 12, 1986, Judge Breckenridge, through his
8 clerk, noted that the Agreement referred to in the Joint
9 Stipulation of Dismissal and Order Dismissing Action, had not been
10 filed. Berry Decl., Ex. N.

11 Nevertheless, after effectively ignoring these orders from
12 Judge Breckenridge, Scientology, five years later, now brings a
13 motion to enforce the very same Agreement by requesting Judge
14 Geernaert to use the Court's authority against Armstrong, as
15 though Judge Breckenridge had already ordered the parties to
16 perform the Agreement and ordered Armstrong to conform to the
17 Agreement.

18 Pursuant to the above litigation history, on December 23,
19 1991, in Armstrong I, Judge Geernaert denied Scientology's motion
20 to enforce the Agreement while deciding a narrow jurisdictional
21 issue. Specifically, Judge Geernaert held that, at least, without
22 any type of evidentiary hearing,^{29/} he had no jurisdiction to
23 enforce the terms of the Agreement, which had never been presented
24 before the Court and which terms had never been incorporated into
25 an order or judgment by the Court. Indeed, Judge Breckenridge
26 twice before had requested that the parties file the Agreement

27 ^{29/} Michael L. Hertzberg, Scientology's attorney in Armstrong
28 I, argued that no hearing was required. Berry Decl., Ex. Q.

1 with the Court. Thus, Judge Geernaert needed to see the orders
2 signed by Judge Breckenridge insofar as Scientology was seeking
3 relief based upon the orders. Therefore, Judge Geernaert held
4 that an evidentiary hearing was necessary because there was no
5 order upon which he could act and because the "circumstances
6 involved in entering into the agreement, the equitable concept of
7 unclean hands, the public policy concerning any of the provisions
8 sought to be enforced" required more from an "evidentiary
9 standpoint." Judge Geernaert criticized the Agreement as "very
10 broad and unclear . . . [and] to read the whole agreement, you
11 come up with a wonderment as to what was mutual about it . . . you
12 also wonder to what extent offering assistance . . . would be a
13 term that any court would put in its order."³⁰/ Judge Geernaert
14 said the Agreement was "so unclear . . . so ambiguous and . . .
15 one-sided, . . . that it was entered into for the reasons he says
16 were anything but voluntary" and thus merited a hearing.³¹/ He
17 refused to act as Scientology's "rubber stamp," and required a
18 "judicial proceeding, not the one on the [video] tape."³²/

19 Obviously, this decision by Judge Geernaert is a simple,
20 narrow jurisdictional holding on the issue of enforcement of an
21 Agreement which it never had before it. Basically, in construing
22 the effect of Judge Breckenridge's order, the totality of the
23 surrounding circumstances has to be examined to determine what was
24 reasonably contemplated by the parties and the Court. People v.

25
26 ³⁰/ Berry Decl., Ex. Q, 12:22-28.

27 ³¹/ Berry Decl., Ex. Q, 52:12-15.

28 ³²/ Berry Decl., Ex. Q, 13:1-10.

1 Landon White Bail Bonds (1991) 234 Cal. App. 3d 66, 285 Cal. Rptr.
2 575, 581, 582; In Re Gideon (1958) 157 Cal. App. 2d 133, 320 P.2d
3 599. See also Tallman v. Tallman (1964) 29 Cal. App. 2d 39, 39
4 Cal. Rptr. 863, 866; Cotton v. Bennett (1963) 14 Cal. App. 2d 709,
5 29 Cal. Rptr. 715, 720; Western Greyhound Lines v. Superior Court
6 (1958) 165 Cal. App. 2d 216, 331 P.2d 793; Roraback v. Roraback
7 (1940) 38 Cal. App. 2d 592, 101 P.2d 772. Accordingly, this was
8 not a holding, as Scientology mischaracterizes, that the Court
9 lacked jurisdiction period. Indeed, Judge Geernaert noted: "Judge
10 Breckenridge is now retired And I feel that if I had made
11 the order I would want to be in the position to analyze it,
12 whether or not that order that was made for the parties should not
13 be enforced as against any legitimately interested third party.
14 And I think that-is the scope of my jurisdiction." Berry Decl.,
15 Ex. Q, 7:7-12.

16
17 C. BLATANT FORUM SHOPPING

18 On October 3, 1991, Scientology filed its Motion to Enforce
19 Settlement Agreement; For Liquidated Damages and to Enjoin Future
20 Violations in Armstrong I in Los Angeles Superior Court. Berry
21 Decl., Ex. DD. Scientology's Motion was denied by Judge Geernaert
22 on December 23, 1991. Berry Decl., Ex. Q. Accordingly, on
23 February 4, 1992, Scientology merely changed the caption of their
24 moving papers for injunctive relief and filed the identical
25 papers, with identical exhibits, in support of their request for
26 injunctive relief in Armstrong II in Marin County Superior Court.
27 Berry Decl., Ex. DD.

28 Clearly, however, with all due respect, Marin County

1 Superior Court is not the proper court. Basically, Scientology
2 disregards the provisions of the Agreement it is itself seeking to
3 enforce, making the Los Angeles Superior Court the proper court,
4 because to do so would serve its forum shopping purposes.
5 Furthermore, Scientology is effectively making an end run around
6 the Los Angeles Superior Court's clear recognition of
7 Scientology's unconscionable litigation tactics. Scientology is
8 obviously afraid of the court which knows it best and is, thus,
9 seeking to enforce provisions of its Agreement in a jurisdiction
10 which knows nothing of its long history of antecedent litigation.
11

12 VI. ARMSTRONG II SHOULD BE DISMISSED ON COLLATERAL
13 ESTOPPEL GROUNDS.

14 The doctrine of collateral estoppel proceeds upon the
15 premise that an issue was concluded by prior litigation.
16 Basically, the availability of the defense requires the
17 affirmative resolution of four questions: (1) Was the issue
18 decided in the prior adjudication identical to the issue presented
19 in the present action? (2) Was there a final judgment on the
20 merits? (3) Is the party against whom the defense is asserted a
21 party or in privity with a party to the prior adjudication? (4)
22 Will the application of the defense work an injustice?" People v.
23 Sims (1982) 32 Cal. 3d 468, 484, 186 Cal. Rptr. 77; People v.
24 Rodriguez (1984) 160 Cal. App. 3d 650, 653, 206 Cal. Rptr. 79;
25 Mallen and Smith, Legal Malpractice, Vol. 2, § 50, 51, 713 (3d
26 ed.)

27 In the present case, pursuant to Judge Geernaert's findings
28 in Armstrong I as to the necessity of an evidentiary hearing,

1 Scientology is clearly estopped in Armstrong II from making its
2 same arguments in support of enforcement of the Agreement. See
3 infra V (B) and (C). Specifically, the injunctive relief which
4 Scientology unsuccessfully sought in Armstrong I is identical to
5 the injunctive relief it now seeks in Armstrong II. In fact, in a
6 letter dated March 5, 1992, from Andrew Wilson, Scientology's
7 attorney in Armstrong II, to Ford Greene, Mr. Wilson admits that
8 in Armstrong I, the "Church of Scientology International applied
9 to that court for an order restraining Armstrong from breaching
10 the Settlement Agreement - an order remarkably similar to the
11 order sought in the instant preliminary injunction motion." And,
12 several paragraphs later, in the same letter, Mr. Wilson admits
13 again that "the substance of [Scientology's] claim [in the
14 preliminary injunction motion in Armstrong II] is the same as that
15 asserted in Los Angeles County." Consequently, after failing in
16 their attempts to prevent the use of Armstrong's deposition and
17 trial testimony in Yanny II on January 30, 1992, Scientology was
18 able to immediately turn around and file Armstrong II in Marin
19 County Superior Court requesting injunctive relief through the
20 identical moving papers and exhibits as those filed in Armstrong
21 I. Berry Decl., Ex. DD.

22 Furthermore, there was a final judgment by Judge Geernaert
23 in Armstrong I on Scientology's particular motion for injunctive
24 relief. Specifically, Judge Geernaert held that an evidentiary
25 hearing was necessary for enforcement of the Agreement.
26 Accordingly, the next step would have been for Scientology to file
27 a new motion to enforce the Agreement at an evidentiary hearing in
28 Armstrong II. However, Scientology, fearing Judge Geernaert's

1 obvious recognition of its unenforceable settlement agreement and
2 unconscionable litigation tactics, is now seeking to enforce the
3 same Agreement through the Armstrong II court.

4
5 VII. INJUNCTIVE RELIEF SHOULD BE DENIED.

6 Section 526 of the Code of Civil Procedure regulates the
7 issuance of a preliminary injunction by considering the following
8 factors: adequacy of other remedies, irreparable harm,
9 multiplicity of judicial proceedings, success on the merits.^{33/}

10 //

11 //

12 //

13 //

14 ^{33/} Section 526 states in pertinent part that:

15 [a]n injunction may be granted in the following cases:

- 16 1. When it appears by the complaint that the plaintiff
17 is entitled to the relief demanded, and such relief, or
18 any part thereof, consists in restraining the commission
19 of or continuance of the act complained of, either for
20 a limited time or perpetually;
21 2. When it appears by the complaint or affidavits that
22 the commission or continuance of some act during the
23 litigation would produce waste, or great or irreparable
24 injury, to a party to the action;
25 3. When it appears, during the litigation, that a
26 party to the action is doing, or threatens, or is about
27 to do, or is procuring or suffering to be done, some act
28 in violation of the rights of another party to the
action respecting the subject of the action, and is
tending to render the judgment ineffectual;
4. When pecuniary compensation would not afford
adequate relief;
5. Where it would be extremely difficult to ascertain
the amount of compensation which would afford adequate
relief;
6. Where the restraint is necessary to prevent a
multiplicity of judicial proceedings;
7. Where the obligation arises from a trust.

1 A. OTHER REMEDIES ARE ADEQUATE AND THERE IS NO
2 IRREPARABLE HARM.

3 Consequently, pursuant to Sections 526 (4) and (5) of the
4 Code of Civil Procedure, an injunction will rarely be granted
5 where a suit for damages would provide a clear remedy. See, e.g.,
6 Bush v. California Conservation Corps (1982) 136 Cal. App. 3d 194,
7 185 Cal. Rptr. 892; Thayer Plymouth Center, Inc. v. Chrysler
8 Motors Corp. (1967) 255 Cal. App. 2d 300, 63 Cal. Rptr. 148.

9 Also, injunctive relief will likely not be granted unless
10 someone will be badly hurt in a way which cannot be later
11 repaired. People ex rel. Gow v. Mitchell Bros. (1981) 118 Cal.
12 App. 3d 863, 173 Cal. Rptr. 476; Cal. Civ. Proc. Code 526(2).
13 This "irreparable harm" is subject to varying interpretations. In
14 fact, the Restatement (Second) of Torts §933 (Reporter's Note)
15 states that the term "irreparable harm" adds nothing to the
16 broader concept of inadequacy of legal remedy.

17 In the present case, Scientology is clearly seeking to
18 enforce and uphold the Agreement by bringing this action. The
19 Agreement contains a liquidated damages provision. Specifically,
20 in Paragraph 7D of the Agreement: "Plaintiff agrees that if the
21 terms of this paragraph are breached by him, that CSI and the
22 other Releases would be entitled to liquidated damages in the
23 amount of \$50,000 for each such breach." Thus, clearly, the
24 parties contemplated the prospect of breach, agreed that pecuniary
25 compensation would provide adequate relief, and even agreed upon
26 the measure of damages. Accordingly, Scientology, through their
27 own Agreement, cannot make out these essential elements of
28 inadequate remedy and irreparable harm for granting its proposed

1 preliminary injunction and, therefore, injunctive relief must be
2 denied.^{34/}

3
4 B. THERE WILL BE NO MULTIPLICITY OF JUDICIAL
5 PROCEEDINGS.

6 This factor applies to prevent a multiplicity of suits,
7 where numerous actions would not provide an adequate legal remedy.
8 Cal. Civ. Proc. Code 526(6). In the present case, there will be
9 no multiplicity of judicial proceedings with the denial of
10 Scientology's proposed preliminary injunction. On the contrary, a
11 multiplicity of legal proceedings will result if injunctive relief
12 is granted because of the nature of the relief sought.
13 Specifically, the relief sought so clearly threatens
14 constitutionally protected activity, association and speech that
15 the issuance of the proposed preliminary injunction would be a
16 multiplicity of lawsuits waiting to happen. Indeed, Judge
17 Geernaert noted: "[C]ourts are constrained not to make orders
18 that are ambiguous or uncertain or that require an undue amount of
19 court supervision. . . . You can't issue every order somebody
20 wants you to issue or you are going to be running people's
21 businesses; you'll be taking care of their hedges between their
22 houses;" (Berry Decl., Ex. Q, 4:16:16-23); and "That is one of
23 the problems in a judicial system of having a situation involving
24 continual, open-ended, repeated court supervision." (Berry Decl.,
25

26 ^{34/} This argument does not, in any way, concede the fact that
27 the liquidated damages provision is clearly a penalty which is
28 voidable and unenforceable at the option of either party. However,
because Scientology is seeking to enforce the Agreement, it is bound
by its provisions, including the liquidated damages provision.

1 Ex. Q, 28:10-12). In fact, Judge Geernaert noted: "In my
2 experience, that is the kind of order that I would not issue
3 because it involves total ambiguity and just when is somebody
4 violating it? Berry Decl., Ex. Q, 8:6-8. Thus, Judge Geernaert
5 recognized the obvious need for court supervision with the
6 enforcement of the Agreement. See infra VII (C)(3)(b) and (c).

7
8 C. SCIENTOLOGY CANNOT SUCCEED ON THE MERITS AT
9 TRIAL.

10 Even where Scientology may not have an adequate legal remedy
11 and/or irreparable damage is threatened, a preliminary injunction
12 may not issue if Scientology is likely to lose in the end. The
13 requirement is one of "reasonable probability." Specifically, a
14 preliminary injunction must not issue unless it is "reasonably
15 probable that the moving party will prevail on the merits." San
16 Francisco Newspaper Printing Co. v. Superior Court (1985) 170 Cal.
17 App. 3d 438, 216 Cal. Rptr. 462. Clearly, Scientology cannot
18 succeed on the merits at trial.

19
20 1. No Sufficient Consideration Exists.

21 The general rule is that every executory contract requires
22 consideration. Cal. Civ. Code §1550; Fritz v. Thompson (1954) 125
23 Cal. App. 2d 858, 863, 271 P.2d 205. Consideration may be an act,
24 forbearance, change in legal relations, or a promise. 1 Witkin,
25 Summary of California Law §207 (9th ed. 1987). Consideration is
26 sufficient to support the promises and agreements of the other
27 party unless one or the other of the promises is void or lacking
28 in mutuality. 14 Cal. Jur. 3d, Contracts §95 (1974). Thus, if

1 analysis shows that one of the promises does not impose any legal
2 duty on the party making it, that promise is not consideration for
3 the other, and the purported contract lacks mutuality of
4 obligation, or of consideration, which means the same thing. Id.
5 Indeed, Judge Geernaert acknowledged such lack of mutuality in the
6 Agreement Scientology seeks to enforce by preliminary injunction.
7 See infra VII (C) (1) (b).

8 a. The Consideration is Illegal.

9 The object of a contract must be lawful, i.e., it must not
10 be in conflict either with express statutes or public policy.
11 Cal. Civ. Code §§1550, 1595, 1596. A promise which is void for
12 illegality or other reason cannot be consideration for another
13 promise or act. Cal. Civ. Code §1607; 1 Witkin, Summary of
14 California Law §219. Whenever a court becomes aware that a
15 contract is illegal, it has a duty to refrain from entertaining an
16 action to enforce the contract. Bovard v. American Horse
17 Enterprises, Inc. (1988) 201 Cal. App. 3d 832, 838, 247 Cal. Rptr.
18 340.

19 (i) The Agreement is contrary to public
20 policy.

21 Anything which has a tendency to injure the public welfare
22 is, in principle, against public policy. 1 Witkin, Summary of
23 California Law §462. In other words, public policy means
24 "anything which tends to undermine that sense of security for
25 individual rights, of personal liberty or private property, which
26 any citizen ought to feel is against public policy." Safeway
27 Stores v. Hotel Clerks etc. Association (1953) 41 Cal. 2d 567,
28 575, 261 P.2d 721. Courts may declare void as against public

1 policy contracts which, though not in terms specifically forbidden
2 by legislation, are clearly injurious to the interests of society.
3 Maryland C. Co. v. Fidelity & Cas. Co. of N.Y. (1925) 71 Cal. App.
4 492, 497.

5 In the present case, the Agreement, which prevents the full
6 and impartial course of justice, is injurious to the interests of
7 society and is void as against public policy. Specifically, in
8 Paragraph 7G of the Agreement: "Plaintiff agrees that he will not
9 voluntarily assist or cooperate with any person adverse to
10 Scientology in any proceeding against any of the Scientology
11 organizations, individuals or entities." Similarly, in Paragraph
12 10: "Plaintiff agrees that he will not assist or advise anyone,
13 including individuals, partnerships, associations, corporations,
14 or governmental agencies contemplating any claims or engaged in
15 litigation or involved in or contemplating any activity adverse to
16 the interests of any entity or class of persons."

17 Several cases on the issue of suppression of evidence are
18 factually on all fours with the case at bar. For example, in
19 Tappan v. Albany Brewing Co. (1989) 80 Cal. 570, 22 P. 257, a
20 seminal case in this area, there was a contract between the
21 purchaser at a partition sale and one of the parties to the
22 partition suit, who was about to contest the confirmation of the
23 sale for inadequacy of the price bid, to the effect that said
24 party, in consideration of specified sum to be paid in addition to
25 her interest in the property, would refrain from contesting said
26 confirmation. The court held that this was a contract for the
27 concealment of a material fact from the court and the other
28 parties to the partition suit, which it was the duty of the

1 contracting party to me known. Accordingly, the contract was void
2 as against public policy. See also Beard v. Beard (1884) 65 Cal.
3 354, 4 P. 229; McCormick v. Woodmen of the World (1922) 57 Cal.
4 App. 568, 207 P. 943 (stipulation in contract that certain
5 evidence only shall be admissible in case of litigation
6 subsequently arising under such contract cannot be allowed to
7 control the action of the court in the admission of or in the
8 effect to be given the evidence).

9 In Maryland C. Co., 71 Cal. App. 492, after the papers had
10 been served, a contract was made between the parties whereby, in
11 consideration of a promise to pay a certain sum of money, the
12 plaintiff agreed to withhold the complaint from the files and give
13 no information to anyone concerning the same or the commencement
14 of the suit, thereby preventing those interested from learning the
15 true facts. The court in Maryland concluded that this exhibited a
16 clear attempt to conceal judicial proceedings and to obstruct
17 justice for the purpose of wronging others interested and,
18 therefore, the agreements of this character are clearly against
19 public policy.

20 In Allen v. Jordanos' Inc. (1975) 52 Cal. App. 3d 160, 125
21 Cal. Rptr. 31, the court did not allow a breach of contract action
22 to be litigated because it involved a contract that was void for
23 illegality. Specifically, plaintiff filed a complaint for breach
24 of contract which he subsequently amended five times. The
25 allegations of the amended complaints stated that there had been
26 an agreement between the parties whereby defendant laid off
27 plaintiff, defendant's employee, and allowed plaintiff to receive
28 unemployment benefits and union benefits. The agreement stated

1 that, "Defendants also agreed that they would not communicate to
2 third persons, including prospective employers, that plaintiff was
3 discharged or resigned for dishonesty, theft, a bad employment
4 attitude and that defendants would not state they would not rehire
5 plaintiff." Id. at 163. Plaintiff then alleged that there had
6 been a breach of the agreement in that defendants had communicated
7 to numerous persons, including potential employers and the
8 Department of Human Resources and Development, that plaintiff was
9 dishonest and guilty of theft and for that reason had resigned for
10 fear of being discharged for those reasons, that plaintiff had a
11 bad attitude and that defendants would not rehire him. The court
12 held that the plaintiff had bargained for an act that was illegal
13 by definition, the withholding of information from the Department
14 of Human Resources Development. The court stated that the
15 nondisclosure was not a minor or indirect part of the contract,
16 but a major and substantial consideration of the agreement. And,
17 a bargain which includes as part of its consideration the
18 nondisclosure of discreditable facts is illegal. Thus, the court
19 held that the consideration, which was void for illegality, was no
20 consideration at all. Id. at 166. See also Brown v. Freese
21 (1938) 28 Cal. App. 2d 608, 618, 83 P.2d 82 (agreement not to
22 disclose discreditable facts about another has been recognized by
23 the courts as an illegality).

24 Then, in Williamson v. Superior Court (1978) 21 Cal. 3d 829,
25 836-39, 148 Cal. Rptr. 39, plaintiff in personal injury action
26 petitioned for a writ of mandate to compel the Los Angeles
27 Superior Court to require disclosure of a report prepared by an
28 expert employed by counsel for one of the defendants. The

1 California Supreme Court held that an arrangement whereby the tire
2 manufacturer agreed to indemnify its codefendant, the manufacturer
3 of a tire-changing machine, if the codefendant would withdraw a
4 certain expert witness whose report was unfavorable to the tire
5 manufacturer, amounted to a bargain for the concealment or
6 suppression of evidence. Id. at 836. The Supreme Court
7 explicitly recognized that agreements to suppress evidence have
8 long been held void as against public policy, both in California
9 and in most common law jurisdictions. Id. at 836-37. The Supreme
10 Court cited to Valentine v. Stewart (1860) 15 Cal. 387, 404, in
11 which the Supreme Court invalidated a contract to withdraw
12 depositions taken in connection with litigation, as "affected with
13 a fatal taint of illegality. Id. at 837. The Supreme Court
14 recognized that the agreement at issue was clearly of such a
15 nature as the Valentine contract. Specifically, in return for
16 Firestone's promise to pay consideration, Big Four agreed to
17 suppress highly relevant evidence which, if revealed at trial,
18 would be harmful to Firestone. Id. The Court further recognized
19 that defendants do not nullify the agreement's insidious effect by
20 attaching to it the seemingly innocuous label of "contract of
21 indemnification." Id. Thus, the Court decided that the agreement
22 clearly indicated the very real potential for "subtle but
23 deliberate attempts to suppress relevant evidence. Id. at 838.
24 The inevitable effect of the order would be to condone defendants'
25 concealment of evidence, in direct contravention of the Court's
26 insistence that neither party to such an agreement should receive
27 the aid of a court in effectuating such an illegal scheme. Id.
28 (citing Tappan, 80 Cal. at 572). The Court further concluded that

1 "[t]his court cannot place its imprimatur upon planned stratagems
2 of purchases suppression of evidence." Id. at 838.

3 Even the United States Supreme Court, in Precision Co. v.
4 Automotive Co., 324 U.S. 806 (1944), recognized that an agreement
5 to suppress evidence requires dismissal. Specifically, Automotive
6 sought to enforce various patents against Precision. There were
7 several persons and entities claiming prior use in design of the
8 patents involved. During the initial battle for patents,
9 Automotive learned that certain testimony was perjured. Instead
10 of revealing the fraud, Automotive procured an outside settlement
11 agreement with the perjurer, barring him from ever questioning the
12 validity of Automotive's patent. Thus, through its settlement
13 agreement, Automotive procured silence. The United States Supreme
14 Court stated that the issues involved reached beyond the litigants
15 to the action, and affected the public at large. Specifically,
16 the Supreme Court stated:

17 "The far-reaching social and economic consequences of a
18 patent, therefore, give the public a paramount interest in
19 seeing that patent monopolies from backgrounds free from
20 fraud or other inequitable conduct and that such monopolies
21 are kept within their legitimate scope. The facts of this
22 case must accordingly be measured by both public and private
23 standards of equity. And when such measurements are made,
24 it becomes clear that the District Court's action in
25 dismissing the complaints and counter-claims 'for want of
26 equity' was more than justified."

27
28 The Supreme Court further stated:

1 "Automotive knew and suppressed facts that, at the very
2 least, should have been brought to the attention of the
3 patent office, especially when it became evidence that the
4 interference proceedings would continue no longer. . . .
5 Public interest demands that all facts relevant to such
6 matters be submitted formally or informally . . . only in
7 this way can that agency act to safeguard the public . . .
8 and 'mute and helpless victims of deception and fraud.'"
9 324 U.S. at 818.

10 More recently, in Mary R. v. B. & R. Corp. (1983) 149 Cal.
11 App. 3d 308, 196 Cal. Rptr. 871, the Division of Medical Quality
12 of the Board of Medical Quality Assurance applied to intervene in
13 an already dismissed lawsuit that had been brought by a patient
14 against a physician for allegedly molesting her, and to modify a
15 stipulated gag order and an order sealing court records. The
16 court of Appeal affirmed the denial of the application for
17 intervention,^{35/} ordered that the court's stipulated gag order was
18 against public policy, and remanded for further proceedings with
19 respect to the order to seal the court record. The court held
20 that it was clearly improper, even on the stipulation of the
21 parties, for the court to issue an order designed not to preserve
22

23 ^{35/}Although the Court of Appeal affirmed the denial of
24 Division's application for intervention, the facts upon
25 which it based its affirmation are distinguishable from the
26 facts herein. Specifically, Division only had a
27 consequential interest in the matter in litigation and
28 the lawsuit had already been dismissed. In the present
case, clearly Yanny has a direct and immediate interest in
the matter in litigation and in the success of the parties
in the litigation, and the lawsuit is ongoing. Thus, the
section of the court's decision on intervention is
inapposite.

1 the integrity and efficiency of the administration of justice, but
2 to subvert public policy by shielding the doctor from governmental
3 investigation designed to protect the public from misconduct
4 within the medical profession. Id. at 316. The court stated that
5 such a stipulation was against public policy, similar to an
6 agreement to conceal judicial proceedings and to obstruct justice.
7 Id. (citing Maryland, 71 Cal. App. at 499). Accordingly, because
8 such a contract made in violation of established public policy
9 would not be enforced, the court held it was improper for the
10 court to sanction the parties' stipulation under the pain of
11 threatened contempt. 149 Cal. App. 3d at 317 (citing Bianco v.
12 Superior Court (1968) 265 Cal. App. 2d 126, 131, 71 Cal. Rptr.
13 322). Thus, the court concluded that in light of the overbreadth
14 of the order and its intended effect upon the investigation, it
15 would strike the order of confidentiality, stressing an enactment
16 designed for the public welfare cannot be abridged by stipulation.
17 Id.^{36/}

18 Clearly, pursuant to Paragraphs 7G and 10 of the Agreement,
19 Armstrong has been muscled into concealing such matters, which may
20 be material facts, from this Court. However, following the above
21 discussion on public policy and the applicable case law, it is
22 clear that Scientology cannot preclude Armstrong from divulging
23 knowledge of unlawful, unethical, uncomfortable or embarrassing
24 Scientology practices and activities. See Tappan, 80 Cal. at 571-

25 ^{36/} In support of the above principle, Senator Bill Lockyer,
26 Chairman of the Senate Judiciary Committee, has introduced a bill
27 that would make public the details of confidential legal agreements.
28 Senator Lockyer believes this would clearly put an end to secret
out-of-court "settle and seal" deals that "sweep their misdeeds
under the carpet."

1 72. Also, Scientology paid money to Armstrong to withhold
2 information from litigants and to avoid service of legal process.
3 Thus, like in Maryland, this Court must conclude that this
4 Agreement exhibits a clear attempt to conceal judicial proceedings
5 and to obstruct justice for the purpose of wronging others
6 interested and, therefore, the Agreement is clearly against public
7 policy. 71 Cal.App. at 499. In addition, the facts herein are
8 similar to the facts in Allen and, thus, this Court must disallow
9 Scientology's contract action to be litigated because it involves
10 a contract that is void for illegality. 52 Cal. App. 3d at 163.

11 In sum, the Agreement seeks to remove Armstrong from acting
12 adversely to Scientology both in word and in deed and from playing
13 an active role in the adversarial truth-seeking process provided
14 by the judiciary. Indeed, Armstrong is precluded from clarifying
15 Scientology's self-serving mischaracterizations. Therefore, this
16 Agreement constitutes a fraud on this Court which should not be
17 tolerated. See Tappan, 80 Cal. at 571-72. The Agreement is
18 against public policy, and neither party should be aided by this
19 Court to enforce it. See id.; Bovard, 201 Cal. App. 3d at 838.
20 In fact, Judge Geernaert noted: "I know we like to settle cases.
21 But we don't want to settle cases and , in effect, prostrate the
22 court system into making an order which is not fair or in the
23 public interest." Berry Decl., Ex. Q, 52:16-19.

24 Furthermore, Scientology cannot obtain either a preliminary
25 injunction or judgment herein because a contract that is void as
26 against public may not be made the foundation of any action either
27 in law or in equity. Morey v. Paladini (1922) 187 Cal. 727, 733,
28 203 P. 760. See also Tiedje v. Aluminum Paper Milling Co. (1956)

1 46 Cal. 2d 450, 453-54, 296 P.2d 554; Pomeroy, §397, p. 738
2 ("Whenever a party, who as actor, sets the judicial machinery in
3 motion to obtain some remedy, has violated conscience, good faith,
4 or other equitable principle, in his prior conduct, then the doors
5 of the court will be shut against him in limine; the court will
6 refuse to interfere on his behalf, to acknowledge his right, or to
7 award him any remedy."). Specifically, it has long been a rule of
8 law that courts will not compel parties to perform contracts which
9 have for their object the performance of acts against sound public
10 policy either by decreeing specific performance or awarding
11 damages for breach. This rule is not generally applied to secure
12 justice between parties who have made an illegal contract, but
13 from regard for a higher interest - that of the public whose
14 welfare demands that certain transactions be discouraged. See
15 Owens v. Haslett (1950) 98 Cal. App. 2d 829, 221 P.2d 252 (quoting
16 Takeuchi v. Schmuck, 206 Cal. 782, 786, 276 P. 345).

17 Moreover, Scientology cannot obtain either a preliminary
18 injunction or judgment merely because it paid money to Armstrong
19 pursuant to the Agreement. Specifically, the doctrines of
20 estoppel by conduct and ratification have no application to a
21 contract which is void because it violates an express mandate of
the law or the dictates of public policy. Such a contract has no
23 legal existence for any purpose and neither action nor inaction of
24 a party to it can validate it and no conduct of a party can be
25 invoked as estoppel against asserting its invalidity. First
26 National Bank v. Thompson (1931) 212 Cal. 388, 405-06 (quoting
27 Tatterson v. Kehrlein, 88 Cal. App. 34, 49, 263 P. 285). In any
28 event, the court can sever any lawful provisions of this Agreement

1 from the unlawful provisions. See infra A1.

2
3 (ii) The Agreement obstructs the
4 administration of justice.

5 As discussed above, an agreement to suppress evidence, to
6 conceal a witness, or to procure false testimony is illegal.
7 Thus, the Agreement is void as against public policy. See infra
8 VII (C) (1) (a) (i).^{37/}

9 Furthermore, it is not lawful for one party to a contract,
10 even by express terms thereof, to provide, in advance of any
11 controversy growing out of the contract, that his judgment of the
12 law regarding any question which may arise shall preclude the
13 other party to the contract from contesting the same in a court of
14 law or equity. However, in Paragraph 4B of the Agreement, with
15 respect to the appeal pending before the California Court of
16 Appeal, Second Appellate District, Division 3, arising out of
17 Armstrong v. Church of Scientology of California, Appeal No.
18 B005912: "Plaintiff agrees to waive any rights he may have to take
19 any further appeals from any decision eventually reached by the
20 Court of Appeal or any rights he may have to oppose (by responding
21 brief or any other means) any further appeals taken by the Church
22 of Scientology of California." Thus, Armstrong took a
23 jurisprudential dive by waiving further appeal rights and the
24 right to oppose Scientology's appeal.

25 ^{37/} In the criminal context, such conduct would amount to an
26 obstruction of the administration of justice and a violation of
27 public policy mandating dismissal of the criminal charges. See
28 Penal Code §§ 136, 136 1/2, 137, 138; 2 Cal. Evid. Code §1027; 2
Cal. Crimes, text and Supp., §§815, 816. See also People v. Dean
Richard Pic'l (1982) 31 Cal. 3d 731, 183 Cal. Rptr. 685.

1 Accordingly, to enforce the Agreement and to enjoin
2 Armstrong from assisting Yanny in Yanny II, this Court would be
3 providing Scientology with a tool for them to suppress relevant
4 testimony, thus undermining the interest of justice by permitting
5 a one-sided legal contest. The proposed preliminary injunction
6 would violate the doctrine providing for the hard clash of
7 opposing viewpoints and would effectively permit Scientology to be
8 both plaintiff and defendant at the same time in this action to
9 Yanny II and in all future matters where the Agreement is
10 enforced. Further, the grant of the proposed injunction by this
11 Court would allow Scientology to manipulate the adversarial
12 system, to suppress evidence, and to judicially engineer "Fair
13 Game" and would authorize Scientology's unconscionable litigation
14 tactics, e.g., Scientology's war against the judges, etc. Berry
15 Dec. Ex. I

16
17 (iii) The Agreement is an Improper
18 Restraint of Trade.

19 Section 16600 of the Business and Professions Code provides
20 that, subject to exceptions contained in its chapter, "every
21 contract by which anyone is restrained from engaging in a lawful
22 profession, trade, or business of any kind is to that extent
23 void." The Restatement 2d, Contracts §186 states: "(1) A promise
24 is unenforceable on grounds of public policy if it is unreasonably
25 in restraint of trade. (2) A promise is in restraint of trade if
26 its performance would limit competition in any business or
27 restrict the promisor in the exercise of a gainful occupation."

28 Similarly, in light of the above principles, the Agreement

1 imposes an unreasonable restraint of trade on Armstrong.
2 Specifically, Armstrong is employed by Ford Greene. Scientology
3 wishes to restrict Armstrong's acts by working for Mr. Greene.
4 Indeed, Scientology's claims are also premised on Armstrong's
5 alleged previous employment with Yanny. The proposed injunctive
6 relief would prevent Armstrong from ever working for Yanny. If he
7 did, the prospect of future litigation is clear. However, it is
8 black letter law that contracts in restraint of trade must be
9 reasonable in nature, scope and duration. Therefore, a global
10 lifetime prohibition, such as the one Scientology is attempting to
11 impose, is clearly unenforceable.

12 b. There is a Lack of Mutuality.

13 In bilateral contracts, such as the Agreement herein,
14 mutuality of obligation is necessary because of the mutual
15 promises. In brief, the doctrine is that the promises on each
16 side must be binding obligations in order to be consideration for
17 each other. Mattei v. Hopper (1958) 51 Cal. 2d 119, 122, 330 P.2d
18 625; Larwin-Southern Calif. v. JGB Inv. Co. (1979) 101 Cal. App.
19 3d 626, 637, 162 Cal. Rptr. 52. See also Bleecher v. Conte (1981)
20 29 Cal. 3d 345, 350, 213 Cal. Rptr. 852; 14 Cal. Jur. 3d, §95.
21 Basically, to be obligatory on either party, the contract must be
22 mutual and reciprocal in its obligations. Harper v. Goldschmidt
23 (1909) 156 Cal. 245, 104 P. 451; Doe v. Culverwell (1868) 35 Cal.
24 291.

25 However, Armstrong had "to dismiss with prejudice his
26 claims" pending in Armstrong I. Moreover, in Paragraph 4A of the
27 Agreement: "It is expressly understood by Plaintiff that this
28 release and all of the terms thereof do not apply to the action

1 brought by the Church of Scientology against Plaintiff for
2 Conversion, Fraud and other causes of action." Thus, the release
3 did not apply to Church of Scientology v. Armstrong. Indeed,
4 Judge Geernaert noted: "But to read the whole agreement, you come
5 up with a wonderment as to what was mutual about it; in other
6 words, it starts out by saying, 'This mutual release of all claims
7 . . . ' But all are by Armstrong." Berry Decl., Ex. .12:22-25.
8 Therefore, even Judge Geernaert acknowledged that the releases
9 were not mutual.

10 Furthermore, Armstrong had to waive any rights to take
11 further any appeal from a Court of Appeal decision in Armstrong I
12 or to oppose any appeals taken by the Church of Scientology of
13 California. However, the Church of Scientology of California
14 still had "the right to file any further appeals it deems
15 necessary."

16 Basically, Scientology could say what it wanted about the
17 signing plaintiffs following the settlement, but the signing
18 plaintiffs have to remain silent. Thus, the Agreement lacks
19 mutuality. And, given the fact that no valid consideration
20 exists, the additional requirement of mutuality of obligation is,
21 therefore, essential. 1 Witkin, Summary of California Law §229
22 (citing Restatement 2d, Contracts §79(c) ("If the requirement of
23 consideration is met, there is no additional requirement of . . .
24 'mutuality of obligation.'"); 14 Cal. Jur. 3d, §98. Accordingly,
25 it is unlikely that Scientology will prevail on the merits herein
26 and so its proposed preliminary injunction should not issue.

27
28

2. Armstrong Had No Freedom of Consent.

a. Duress.

Sections 1569(1) and (3) of the California Civil Code defines duress as the (1) "[u]nlawful confinement of the person of the party, . . . " or (2) "[c]onfinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive." The cases, however, have established much broader definitions, and consequently, the language of the decisions can rarely be reconciled with the statutory language. For example, in Harlan v. Gladding, McBean & Co. (1907) 7 Cal.App. 49, 93 P. 400, duress means a condition of mind produced by improper external pressure or influence that practically destroys the free will of a person and causes him to do an act or enter into a contract not of his own volition. In Sistrom v. Anderson (1942) 51 Cal. App. 2d 213, 124 P.2d 372, duress is effectuated by an unlawful threat which overcomes the will of the person threatened and induces him to do an act that he is not bound to do and would not otherwise have done. Steffen v. Refrigeration Discount Corp. (1949) 91 Cal. App. 2d 494, 205 P.2d 727, states that the test of duress, at its harshest, is what would have influenced the conduct of a reasonable man. Indeed, the modern tendency is to find duress whenever one, by the unlawful act of another, is induced to make a contract under circumstances which deprive him of the exercise of free will. See Keithley v. Civil Service Board (1970) 11 Cal. App. 3d 443, 89 Cal. Rptr. 809; Balling v. Finch (1962) 203 Cal. App. 2d 413, 21 Cal. Rptr. 490; Gross v. Needham (1960) 184 Cal. App. 2d 446, 7 Cal. Rptr. 664; Lewis v. Fahn (1952) 113 Cal. App. 2d 95, 247 P.2d 831; Sistrom,

1 51 Cal. App. 2d at 213. Under this standard, duress is to be
2 tested, not by the nature of the threat, but by the state of mind
3 induced in the victim. Balling, 203 Cal. App. 2d at 413; Lewis,
4 113 Cal. App. 2d at 95. An agreement made under duress is
5 voidable. 1 Witkin, Summary of California Law §417.

6 In the present case, the Agreement was made under duress and
7 is, thus, voidable. Specifically, in Paragraph 11A of the
8 Agreement: "The parties to this Agreement acknowledge . . . [t]hat
9 all parties enter into this Agreement freely, voluntarily,
10 knowingly and willingly, without any threats, intimidation or
11 pressure of any kind whatsoever and voluntarily execute this
12 Agreement of their own free will." However, based on the
13 Declaration of Armstrong dated November 17, 1991 (separately filed
14 herewith), such was not the case. In fact, Armstrong previously
15 testified that he had endured many years of psychological duress
16 and brainwashing from Scientology.

17 Specifically, Armstrong stated in his Declaration^{38/} that
18 upon reading the Agreement draft, he was shocked and heartsick.
19 Armstrong then told Mr. Flynn that the condition of "strict
20 confidentiality and silence with respect to [my] experiences with
21 the [organization]" (Agreement, Par. 7D), because it involved over
22 seventeen years of his life, was impossible. Armstrong told Mr.
23 Flynn that the "liquidated damages" clause (Par. 7D) was
24 outrageous, and that pursuant to the Agreement, Armstrong would
25 have to pay \$50,000.00 if Armstrong told a doctor or psychologist

26 ^{38/} The statements in this section by Armstrong are based on
27 representations set forth by Armstrong in his declaration dated
28 November 17, 1991. See various Armstrong declarations separately
filed herewith.

1 about his experiences from those years, or if Armstrong put in a
2 resume what positions he had held during his organization years.
3 Armstrong told Mr. Flynn that the requirements of non-amenability
4 to service of process (Par. 7H) and non-cooperation with persons
5 or organizations adverse to the organization (Pars. 7G, 10) were
6 obstructive of justice. Armstrong told Mr. Flynn that he felt
7 that the agreement to leave the organization's appeal of the
8 decision in Armstrong I and not to be able to respond to any
9 subsequent appeals (Par. 4B) was unfair to the courts and to all
10 of the people who had been helped by the decision. Armstrong told
11 Mr. Flynn that the affidavit the organization was demanding that
12 Armstrong sign along with the Agreement was false. That document,
13 which Armstrong did not have, stated, inter alia, that his
14 disagreements with the organization had been with prior
15 management, and not with the then-current leadership. In fact,
16 there had been no management change and Armstrong had the same
17 disagreements with the organization's "fair game" policies and
18 actions which had continued without change up to the time of the
19 settlement. Armstrong told Mr. Flynn that he was being asked to
20 betray everything and everyone he had fought for against an
21 organization which was based upon justice.

22 In answer to his objections to the Agreement, Mr. Flynn said
23 that the silence and liquidated damages clauses, and anything
24 which called for obstruction of justice, were not worth the paper
25 they were printed on. Mr. Flynn said the same thing a number of
26 times and a number of ways, e.g., that Armstrong could not
27 contract away his constitutional rights; that the conditions were
28 unenforceable. Mr. Flynn then said that he had advised the

1 organization attorneys that those conditions in the Agreement were
2 not worth the paper they were printed on, but that the
3 organization, nevertheless, insisted on their inclusion in the
4 Agreement and would not agree to any changes. Mr. Flynn pointed
5 out the clauses concerning Armstrong's release of all claims
6 against the organization to date and its release of all claims
7 against Armstrong to date (Pars. 1,4,5,6,8) were the essential
8 elements of the settlement and were what the organization was
9 paying for.

10 Mr. Flynn also said that everyone was sick of the litigation
11 and wanted to get on with their lives. Mr. Flynn said that he was
12 sick of the litigation, the threats to him and his family and
13 wanted out. Mr. Flynn said that as a part of the settlement, he
14 and all co-counsel had agreed to not become involved in
15 organization-related litigation in the future. Mr. Flynn
16 expressed a deep concern that the courts in this country cannot
17 deal with the organization and its lawyers and their contemptuous
18 abuse of the justice system. Mr. Flynn said that if Armstrong did
19 not sign the documents, all he had to look forward to was more
20 years of harassment and misery. One of Mr. Flynn's other clients,
21 Edward Walters, who was in the room with them during this
22 discussion, yelled at Armstrong, accusing him of killing the
23 settlement for everyone, and that everyone else had signed or
24 would sign, and everyone else wanted the settlement. Mr. Flynn
25 said that the organization would only settle with everyone
26 together; otherwise, there would be no settlement.

27 During Armstrong's meeting with Mr. Flynn in Los Angeles, he
28 found himself facing a dilemma which Armstrong reasoned through in

1 this way. If Armstrong refused to sign the Agreement and
2 affidavit, all of the other settling litigants, many of whom had
3 been flown to Los Angeles in anticipation of a settlement, would
4 be extremely disappointed and would continue to be subjected to
5 organization harassment for an unknown period of time.

6 Armstrong had been positioned in the settlement drama as a
7 deal-breaker and would undoubtedly lose the support of some, if
8 not all, of these litigants, several of whom were key witnesses in
9 his case against the organization. Although Armstrong was certain
10 that Mr. Flynn and his other lawyers would not refuse to represent
11 him if he did not sign the document, he also knew that they all
12 would view him as a deal-breaker and they would be disappointed as
13 the other litigants in not ending the litigation they desperately
14 wanted out of. The prospect of continuing the litigation with
15 unhappy and unwilling attorneys on his side, even though his
16 cross-complaint was set for trial within three months, was
17 distressing. On the other hand, if Armstrong signed the document,
18 all of his co-litigants, some of whom he knew to be in financial
19 trouble, would be happy, the stress they felt would be reduced,
20 and they could get on with their lives. Mr. Flynn and the other
21 lawyers would be happy and the threat to them and their families
22 would be removed.

23 Armstrong was also not unhappy that he would not have to
24 testify in all of the litigation nor to respond to the media's
25 frequent questions. If the organization continued its fair game
26 practices toward him, Armstrong knew that he would be left to
27 defend himself and he accepted that fact. So, armed with Mr.
28 Flynn's advice that the conditions he found so offensive in the

1 Agreement were not worth the paper they were printed on, and the
2 knowledge that the organization's attorneys were also aware of
3 that legal opinion, he put on a happy face and the following day
4 went through the charade of a videotaped signing.

5 Accordingly, duress exists to void the Agreement. Indeed,
6 Judge Geernaert noted: "So my belief is Judge Breckenridge, being
7 a very careful judge, follows about the same practice and if he
8 had been presented that whole agreement and if he had been asked
9 to order its performance, he would have dug his feet in because
10 that is one of the -- I have seen -- I can't say -- I'll say one
11 of the most ambiguous, one-sided agreements I have ever read. And
12 I would not have ordered the enforcement of hardly any of the
13 terms had I been asked to, even on the threat that, okay, the case
14 is not settled." Berry Decl., Ex. Q, 52:7-15.

15
16 b. Armstrong's Attorney Had a Conflict of
17 Interest With Both Armstrong and a Number of
18 the Other Settling Parties.

19 Rule 5-102 of the Rules of Professional Conduct states:

20 (A) A member of the State Bar
21 shall not accept professional
22 employment without first disclosing his
23 relation, if any, with the adverse
24 party, and his interest, if any in the
25 subject matter of the employment. A
26 member of the State Bar who accepts
27 employment under this rule shall first
28 obtain the client's written consent to

1 such employment.

2 (B) A member of the State Bar shall not
3 represent conflicting interests, except with the
4 written consent of all parties concerned.

5 In the Armstrong settlement, Armstrong was represented by
6 Attorney Michael Flynn. Michael Flynn also represented a number
7 of other Scientologists. Moreover, Michael Flynn was both
8 plaintiff and defendant in his own litigation with Scientology.

9 "In a surprise move in December 1986, the church
10 settled every case brought against them through Boston
11 attorney Michael Flynn. They also settled out of court
12 with former mission holder Martin Samuels and with
13 Julie Christofferson-Tichbourne. In a secret
14 agreement, the plaintiffs agreed not to make any
15 further public statements about Scientology, nor to
16 disclose the amount of the settlements. When the
17 document finally leaked out, it contained an
18 interesting clause, saying that the amounts paid in
19 settlement depended in part upon the 'length and degree
20 of harassment' each plaintiff had received. The
21 payments amounted to almost \$4 million with Armstrong
22 taking \$800,000 and Flynn \$1,000,075,000.00. For that
23 price the Scientologists bought the silence of their
24 most significant opponents. With the Armstrong
25 settlement, the Hubbard archives material which had
26 been held under seal was returned to the
27 Scientologists. The contents of the Affirmations, the
28 Blood Ritual, and Hubbard's letters to his three wives

1 may never be published; but there is enough historical
2 now in the public record to show Hubbard for what he
3 was".³⁹/

4 Clearly, this global Agreement included Armstrong's own attorney.
5 Moreover, Armstrong's own attorney had interests diametrically
6 opposed to those of Armstrong. In addition, Armstrong's own
7 attorney had interests diametrically opposed to those of the other
8 settling former Scientologists. Finally, all of the settling
9 parties had interests that were diametrically opposed as between
10 themselves. Each of them, including Flynn, should have been
11 separately represented. All of these people had endured years of
12 brainwashing, etc. at the hands of Scientology. Berry Dec. Ex. M,
13 p.4. Objectively, none of these settling Scientologists was
14 capable of representing themselves in this situation. They each
15 required legal counsel with undivided loyalty. However, what they
16 got was legal counsel who had conflicts between each of his client
17 and between himself and his clients. No one disputes the
18 Herculean efforts of Michael Flynn against the Church of
19 Scientology. However, Scientology eventually destroyed Flynn's
20 will to fight. However well he had represented these clients
21 prior to the settlement, he breached all applicable ethical rules
22 in representing himself and all of the settling parties in this
23 global settlement. It was a mammoth conflict of interest for
24 Michael Flynn to represent each of the settling parties in a
25 settlement in which he himself was the largest beneficiary.

26 Clearly, Armstrong entered into the Agreement without the

27
28 ³⁹/Jon Atack, A Piece of Blue Sky, Scientology, Dianetics,
L. Ron Hubbard exposed, at p. 357. Berry Decl., Ex. G.

1 benefit of independent objective counsel. Indeed, his counsel's
2 share of the settlement was greater than his.

3
4 c. Fraud.

5 (i) Actual fraud exists.

6 The elements of actual fraud, whether as the basis of the
7 remedy in contract or tort, have been stated as follows: There
8 must be (1) a false representation or concealment of a material
9 fact (or, in some cases, an opinion) susceptible of knowledge, (2)
10 made with knowledge of its falsity or without sufficient knowledge
11 on the subject to warrant a representation, (3) with the intent to
12 induce the person to whom it is made to act upon it; and such
13 person must (4) act in reliance upon the representation (5) to his
14 damage. Harding v. Robinson (1917) 175 Cal. 534, 538, 166 P.808;
15 Wolfe v. Severns (1930) 109 Cal. App. 476, 485, 293 P. 156; 1
16 Witkin, Summary of California Law §393.

17 The act constituting actual fraud may be concealment or "Any
18 other act fitted to deceive." Specifically, "[t]he suppression of
19 that which is true, by one having knowledge or belief of the fact"
20 is actual fraud. Cal. Civ. Code §1572(3); Williamson & Vollmer
21 Engineering v. Sequoia Ins. Co. (1976) 64 Cal. App. 3d 261, 273,
22 134 Cal. Rptr. 427; 1 Witkin, Summary of California Law §398. The
23 Restatement points out that concealment is an affirmative act,
24 equivalent to a misrepresentation (Comment a), and that it usually
25 consists either in actively hiding something from the other party,
26 or preventing him from making an investigation that would have
27 disclosed the true facts (Comment b).

28 The purpose of the catch-all statement on "any other act" is

1 suggested in Wells v. Zenz (1927) 83 Cal. App. 137, 256 P. 484:
2 "Fraud is a generic terms which embraces all the multifarious
3 means which human ingenuity can devise and are resorted to by one
4 individual to get an advantage over another. No definite and
5 invariable rule can be laid down as a general proposition defining
6 fraud, and it includes all surprise, trick, cunning, dissembling,
7 and unfair way by which another is deceived. The statutes of
8 California expressly provide that . . . any other act fitted to
9 deceive is actual fraud." See also Cal. Civ. Code §1572(5).

10 In the present case, actual fraud in the form of concealment
11 clearly exists. Specifically, pursuant to Armstrong's
12 Declaration, none of the "well over a dozen plaintiffs" involved
13 in "the settlement negotiations" was advised that the Agreement
14 was not reciprocal, i.e., that the organization could say whatever
15 it wanted about the signing plaintiffs following the settlement,
16 but that the plaintiffs, including Armstrong, must remain silent.
17 See infra VII (C)(2)(a)

18 Furthermore, the conflicts between Mr. Flynn and each of the
19 settling parties, including Armstrong, were never explained to the
20 signing plaintiffs prior to their signing the Agreement. See
21 infra VII (C)(2)(a). Indeed, the signing plaintiffs, including
22 Armstrong, were advised by their attorney, Michael J. Flynn, that
23 the settlement agreements "are not worth the paper they are
24 printed on."

25 In sum, Mr. Flynn knew all of these material facts yet
26 concealed these material facts from the signing plaintiffs,
27 including Armstrong, with the intent to induce the plaintiffs,
28 including Armstrong to sign the Agreement. In turn, Armstrong and

1 the other signing plaintiffs signed the Agreement in reliance upon
2 Mr. Flynn's representations, to their detriment. Accordingly,
3 actual fraud exists to void the Agreement.

4
5 (ii) Constructive fraud exists.

6 Constructive fraud consists of (1) "any breach of duty
7 which, without an actually fraudulent intent, gains an advantage
8 to the person in fault, or anyone claiming under him, by
9 misleading another to his prejudice, or to the prejudice of anyone
10 claiming under him"; (2) "any such act or omission as the law
11 specially declares to be fraudulent, without respect to actual
12 fraud." Cal. Civ. Code §1573. Where a confidential or fiduciary
13 relationship exists between the parties, the failure of the person
14 in whom confidence is placed to disclose material facts within his
15 knowledge may constitute constructive fraud within the meaning of
16 Section 1573(1). Ford v. Shearson Lehman American Express (1986)
17 180 Cal. App. 3d 1011, 1020, 225 Cal. Rptr. 895; Main v. Merrill
18 Lynch (1977) 67 Cal. App. 3d 19, 32, 136 Cal. Rptr. 378; McFate v.
19 Bank of America (1932) 125 Cal. App. 683, 686, 14 P.2d 146.

20 In the present case, clearly constructive fraud also exists.
21 Specifically, pursuant to Armstrong's Declaration, Mr. Flynn, who
22 had a fiduciary relationship with the signing plaintiffs,
23 including Armstrong as their attorney, failed to disclose material
24 facts within his knowledge to the signing plaintiffs, including
25 Armstrong, prior to their signing the Agreement. See infra VII
26 (C)(2)(a). The failure of Mr. Flynn, in whom confidence is
27 placed, to disclose such material facts constitutes constructive
28 fraud, thus, voiding the Agreement.

1 3. The Proposed Preliminary
2 Injunction is Contrary to
3 Armstrong's and Yanny's
4 Constitutional Rights.

5 a. Freedom of Religion

6 In Paragraph 7F of the Agreement: "Plaintiff agrees that he
7 will never again seek or obtain spiritual counselling or training
8 or any other service from any Church of Scientology,
9 Scientologist, Dianetics or Scientology auditor, Scientology
10 minister, Mission of Scientology, Scientology organization or
11 Scientology affiliated organization." Thus, the Court's
12 enforcement of this provision clearly abridges Armstrong's right
13 to the free exercise of religion, should he ever be crazy enough
14 to exercise this right again with the Church of Scientology. See
15 U.S. Constitution, First Amendment.

16
17 b. Freedom of Speech

18 The proposed injunction would abridge both Armstrong's and
19 Yanny's rights to free speech. Specifically, Judge Cardenas
20 expressly stated that his Order of August 6, 1991 did not preclude
21 Yanny from gathering evidence in support of his against
22 Scientology in Yanny II. Thus, the proposed injunction would have
23 the effect of restricting Armstrong from talking to Yanny
24 regarding Yanny II and providing evidence in Yanny II, contrary to
25 Judge Cardena's express order. See infra IX. Furthermore, the
26 content of Armstrong's speech forms the basis for Scientology's
27 proposed regulation. Therefore, the restriction on Armstrong's
28 speech must be scrutinized by this Court.

1 Accordingly, Yanny's right to gather evidence, Armstrong's
2 right to disseminate information, and the public's interest in
3 receipt of these diversified communications all must be
4 considered. And from this consideration, this Court will conclude
5 that Scientology's purposeful suppression of Armstrong's and
6 Yanny's free speech is unconstitutional. U.S. Constitution, First
7 Amendment.

8 In addition, the proposed injunction is clearly an
9 enforcement nightmare waiting to happen. Specifically, the
10 enforcement of the Agreement would encourage Scientology to commit
11 constant surveillance and investigation of Armstrong and Yanny,
12 and to invade their privacy. Scientology would seek to hear every
13 word said between Armstrong and Yanny and would seek to watch
14 everything Armstrong and Yanny did in order to gather evidence in
15 support of their contempt proceedings and their enforcement of the
16 \$50,000 penalties under the Agreement. Clearly, this an
17 infringement of their constitutional right to privacy. U.S.
18 Constitution, First Amendment. See infra VII(B).

19
20 c. Freedom of Association

21 The proposed injunction would seriously infringe upon both
22 Armstrong's and Yanny's rights to freedom of association with
23 others. Such freedom of association is subject to close scrutiny
24 and cannot be curtailed except with compelling state interests, of
25 which none are present herein. Accordingly, such infringement is
26 unconstitutional. U.S. Constitution, First Amendment.

27 Further, as discussed above, the proposed injunction is
28 clearly an enforcement nightmare waiting to happen. Specifically,

1 the enforcement of the Agreement would encourage Scientology to
2 commit constant surveillance and investigation of Armstrong and
3 Yanny, and to invade their privacy. Scientology would seek to
4 hear every word said between Armstrong and Yanny and would seek to
5 watch everything Armstrong and Yanny did in order to gather
6 evidence in support of their contempt proceedings and their
7 enforcement of the \$50,000 penalties under the Agreement.
8 Clearly, this an infringement of their constitutional right to
9 privacy. U.S. Constitution, First Amendment. See infra VII(B).

10
11 d. Freedom of Occupation

12 The proposed injunction would curtail Armstrong's liberty of
13 contract of employment. Specifically, the Agreement restricts
14 Armstrong's acts of working for Ford Greene. Indeed,
15 Scientology's claims are also premised on Armstrong's alleged
16 previous employment with Yanny. The proposed injunction thus
17 prevents Armstrong from ever working for Yanny. However,
18 Armstrong has an interest in being free to move about, live and
19 practice his profession without the burden of an unjustified
20 restraint. Accordingly, Armstrong's liberty interests in the
21 right to contract of employment is protected against infringement
22 at the hands of this Court. U.S. Constitution, First Amendment.

23
24 4. The Injunction Would Bar Lawful Activity.

25 An injunction order cannot enjoin otherwise lawful activity.
26 People v. Kelley, 70 Cal. App. 3d 418, 138 Cal. Rptr. 681 (1977).
27 In the present case, however, in Paragraph 7H of the Agreement:
28 "Plaintiff agrees not to testify or otherwise participate in any

1 other judicial, administrative or legislative proceeding adverse
2 to Scientology or any of the Scientology Churches, individuals or
3 entities . . . unless compelled to do so by lawful subpoena or
4 other lawful process. Plaintiff shall not make himself amenable
5 to service of any such subpoena in a manner which invalidates the
6 intent of this provision." Thus, the injunction would effectively
7 require Armstrong to avoid service of lawful process. This
8 avoidance of lawful service is clearly unlawful and should not be
9 sanctioned through enforcement of the Agreement by this Court.

10
11 D. THE EQUITIES DO NOT TIP IN PLAINTIFF'S FAVOR.

12 The court must exercise its discretion in favor of the party
13 most likely to be injured. Specifically, if denial of an
14 injunction would result in great harm to the plaintiff, and the
15 defendant would suffer little harm if it were granted, then it is
16 an abuse of discretion to fail to grant the preliminary
17 injunction. Robbins v. Superior Court (1985) 38 Cal. 3d 199, 205,
18 211 Cal. Rptr. 398. In the present case, clearly, the grant of a
19 preliminary injunction would result in the greatest harm to
20 defendant Armstrong, to other litigants, and to the public
21 generally. See infra VII. Armstrong's freedoms of religion,
22 expression, association and employment would be destroyed by the
23 proposed preliminary injunction. In fact, Judge Geernaert stated
24 that an order such as this would destroy the public policy in
25 favor of due process. Berry Decl., Ex.A), 5:7-11.

1 E. EQUITABLE DEFENSES EXIST TO PLAINTIFF'S
2 REQUEST FOR INJUNCTIVE RELIEF.

3 1. Laches.

4 A long wait before filing suit or applying for a preliminary
5 injunction may be evidence of no irreparable harm. Youngblood v.
6 Wilcox (1989) 207 Cal. App. 3d 1368, 1376, 255 Cal. Rptr. 527.

7 In the present case, Scientology did not move promptly to
8 preserve the status quo in Armstrong I. Specifically, it should
9 have moved for injunctive relief back in July of 1991, and not in
10 October of 1991 in the Los Angeles Superior Court. Indeed, all of
11 Scientology's causes of action in their complaint in Armstrong II
12 are explicitly based on events which allegedly occurred around
13 July of 1991. Further, Scientology delayed filing its identical
14 motion for injunctive relief in Armstrong II until February 4,
15 1992, a delay of six months from the date of the conduct
16 complained against, namely July of 1991. Clearly, with this
17 delay, Scientology has failed to prove the essential element of
18 irreparable harm for the granting of its proposed preliminary
19 injunction and, thus, injunctive relief must be denied.

20
21 2. Unclean Hands.

22 The clean hands doctrine bars a party from both equitable
23 and legal relief, where that party has engaged in any
24 unconscientious conduct directly related to the transaction before
25 the court. De Rosa v. Transamerica Title Ins. Co. (1989) 213 Cal.
26 App. 3d 1390, 1397, 262 Cal. Rptr. 370; Burton v. Sosinsky (1988)
27 203 Cal. App. 3d 562, 573, 250 Cal. Rptr. 33. Where unclean hands
28 is found, it operates as an absolute bar to a plaintiff's

1 recovery. In fact, it is settled in California that whenever a
2 party who, as actor, seeks to set judicial machinery in motion and
3 obtain some remedy, has violated conscience, good faith or other
4 equitable principle in his prior conduct then the doors of the
5 court will be shut against him in limine; the court will refuse to
6 interfere on his behalf to acknowledge his right, or to afford him
7 any remedy. Pond v. Ins. Co. of North America (1984) 151 Cal.
8 App. 3d 280, 290, 198 Cal. Rptr. 517 (quoting Moriarty v. Carlson
9 (1960) 184 Cal. App. 2d 51, 55, 7 Cal. Rptr. 282).

10 In the present case, plaintiff's unclean hands should bar
11 them from obtaining injunctive relief. In fact, Judge
12 Breckinridge in Armstrong I found that neither party "has clean
13 hands." Berry Dec., Ex. E. Further, since Judge Breckinridge's
14 recognition, many acts of surveillance, harassment and
15 intimidation have occurred. Specifically, after execution of the
16 Agreement, Scientology has subjected Armstrong (and his attorneys,
17 such as Ford Greene) to numerous and constant acts of
18 intimidation, harassment and surveillance. Indeed, Scientology
19 has produced photos and videos resulting from some of such
20 surveillance in Yanny II. Moreover, the second appellate
21 districts determination that Armstrong was subjected to
22 Scientology's Fair Game Doctrine is, in effect, an appellate
23 determination that Scientology has unclean hands herein. Church
24 of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1067.

25 Thus, plaintiff has engaged in unconscientious conduct
26 related to the action upon which it now seeks relief. Therefore,
27 the clean hands doctrine should operate to deny plaintiff's
28 request for injunctive relief.

1 3. The Interests of Third Persons and
2 the Public Are Involved.

3 Where a prima facie case has otherwise been made out, an
4 injunction will be granted only when such a remedy is appropriate,
5 and in determining the availability of injunctive relief, the
6 court must consider the interests of third persons and of the
7 general public. Loma Portal Civic Club v. American Airlines, Inc.
8 (1964) 61 Cal. 2d 582, 39 Cal. Rptr. 708.

9 In the present case, based on the above discussion of the
10 unlawfulness of the Agreement, it is hard to imagine provisions
11 more contrary to the public interest, to the integrity and
12 fairness of the legal system, and to the rights of third persons,
13 such as Yanny, and the media, than those found in the Agreement.
14 See Berry Decl., Ex. Q. Specifically, a grant of injunctive
15 relief would have a substantial adverse impact on Yanny's ability
16 to defend himself in Yanny II by effectively denying him of an
17 indispensable element of his defense. Furthermore, to enjoin
18 Armstrong and all others acting in concert or in participation
19 therewith based on the terms of the Agreement would fly in the
20 face of Judge Cardenas' Order. See infra IX. Moreover, the
21 public is being deprived of the right to know about Scientology's
22 illegal activities and its attempts to buy the passivity and
23 silence of witnesses and, therefore, obstruct, manipulate and
24 skewer justice. The public must be apprised of the facts
25 surrounding such illegal activities in accordance with their equal
26 protection and due process rights.

27 In addition, agreements between parties which obstruct
28 justice by concealing evidence, such as the Agreement herein, are

1 void as against public policy. Williamson, 21 Cal. 3d at 829, 148
2 Cal. Rptr. 39; Allen, 52 Cal. App. 3d 160, 125 Cal. Rptr. 31.
3 Thus, the public has the right to know whether such an Agreement
4 will be judicially approved.

5
6 VIII. PLAINTIFF'S PRELIMINARY INJUNCTION WOULD
7 CRIPPLE THE DEFENSE OF YANNY IN YANNY II.

8 In Yanny II, plaintiffs allege, as their second cause of
9 action, that Yanny represented Armstrong and that this
10 representation was wrongful because Yanny represented plaintiffs
11 during the course of the Armstrong I litigation. However, now
12 Scientology is attempting to preclude Yanny from gaining access to
13 files in the Armstrong cases in order to ascertain the scope of
14 this alleged wrongful representation. Further, they are
15 effectively attempting to prevent Armstrong from participating in
16 witness interviews with Yanny for the purpose of preparing Yanny's
17 defense and affirmative defenses in Yanny II.

18 In Yanny's case, there is not only a presumption in favor of
19 access to judicial records and witnesses but a compelling need for
20 such information. The Armstrong case files contain evidence, both
21 testimony and documents, which may be relevant to Yanny II. For
22 example, there are issues involving collateral estoppel and
23 judicial findings in the Armstrong cases regarding the "Fair Game
24 Policy"⁴⁰/ which are inherently relevant to Yanny II.

25 ⁴⁰/ The Second District has determined that Armstrong was
26 subjected to Scientology's Fair Game Doctrine "which permits a
27 suppressive person to be tricked, sued or lied to or destroyed ...
28 [or] deprived of property or injured by any means by any
Scientologist . . ." Church of Scientology v. Armstrong (1991) 232
Cal.App.3d 1060, 1067. see generally, Re B and G (Minors) (Custody)

1 Furthermore, the determinative documents necessary to prove or
2 disprove Yanny's involvement as Scientology's attorney in
3 Armstrong I exists nowhere else than in the Armstrong cases.
4 Moreover, witnesses who have provided testimony in the Armstrong
5 cases are percipient witnesses in Yanny II. In addition,
6 Armstrong's own testimony, and pretrial assistance and
7 consultation, is critical to Yanny in his defense of those charges
8 directly involving Yanny's alleged representation of him.
9 However, Scientology is seeking to deny Yanny his court-ordered
10 right to gather evidence, and interview witnesses, for his defense
11 in Yanny II and is seeking to effectively eliminate Armstrong as a
12 source for defense by compelling Armstrong's adherence to an
13 Agreement which is clearly unlawful and violative of public
14 policy. Indeed, Judge Geernaert noted: "And you also wonder to
15 what extent offering assistance is a term that in effect would be,
16 if ordered -- would be a term that any court would put in its
17 order." Berry Decl., Ex. Q, 12:26-28. Scientology should not be
18 allowed to advance a charge against Yanny and then attempt to
19 thwart Yanny's access to the most meaningful assistance and
20

21 [1985] FLR 134; Re B and G (Wards) [1985] Fam. Law 58, (Transcript:
22 Nunnery); Re B and G (Minors) (Custody) FLR 493, [1985] Fam. Law 127
23 (Court of Appeal (Civil Division)); Church of Scientology v.
24 Armstrong (1991) 232 Cal. App. 3d 1060, 1067. See also Wollersheim
25 v. Church of Scientology (1989) 212 Cal. App. 3d 872, 888-91, 260
26 Cal. Rptr. 331; Allard v. Church of Scientology (1976) 58 Cal. App.
27 3d 439, 443 n.1, 129 Cal. Rptr. 797; United States v. Kattar (1st
28 Cir. 1988) 840 F.2d 118, 125; Van Schaick v. Church of Scientology
(U.S.D.C. Mass. 1982) 535 F. Supp. 1125, 1131 n.4; Christofferson v.
Church of Scientology (1982) 57 Ore. App. 203, 644 P.2d 577, 590-92.
Some of Scientology's other illegal activities are described in
Church of Scientology v. Commissioner of Internal Revenue (1984) 83
U.S. Tax Ct. Rpts. 381, 429-42; United States v. Hubbard (1979) 474
F. Supp. 64, 70-77, 79, 83-84. See Appendix of Authorities filed
herewith.

1 evidence available for his defense.

2 Thus, plaintiff is attempting to use this Court to suppress
3 assistance, relevant evidence and testimony in Yanny II.
4 Specifically, Scientology should not be allowed to manipulate the
5 court system to "silence" witnesses through settlement agreements
6 which are void as against public policy. This would otherwise
7 skewer the judicial system by removing the evidence of as many
8 adverse witnesses with whom they can settle. Further, not only is
9 plaintiff effectively denying Yanny an indispensable element of
10 his defense by attempting to silence Armstrong, and prevent his
11 informal communication, but plaintiff is requesting that this
12 Court judicially approve such silencing and withholding of
13 testimony of a witness of critical importance. Vital evidence,
14 and assistance, for Yanny's defense in Yanny II against charges
15 involving Armstrong must surely come from Armstrong!

16
17 IX. PLAINTIFF'S PRELIMINARY INJUNCTION IS AN END RUN AROUND THE
18 ADVERSE YANNY II DECISION AND WOULD VIOLATE JUDGE CARDENAS'
19 EXPRESS ORDER.

20 Plaintiff's second cause of action in Yanny II is premised
21 upon the proposition that Yanny had assisted Armstrong in
22 litigation against Scientology. Scientology moved for a temporary
23 restraining order which was initially denied. In an attempt to
24 present to the Court the true fact that Yanny rendered no such
25 assistance, Armstrong voluntarily provided a declaration which was
26 utilized in opposition to the temporary restraining orders sought
27 by Scientology. Scientology then claimed that such assistance
28 given by Armstrong to Yanny violated the Agreement entered into

1 between Armstrong and Scientology.

2 Plaintiffs then attempted to restrict the use of Armstrong's
3 testimony in Yanny II. However, on January 30, 1992, plaintiffs
4 lost their Motions for Terminating Sanctions and For Issue
5 Evidentiary and Monetary Sanctions which would have precluded
6 Yanny from introducing Armstrong's testimony at the Yanny II
7 trial.

8 Having lost their motions, plaintiffs then immediately
9 proceeded to file Armstrong II in Marin County Superior Court on
10 the very same afternoon with the obvious intent to end run the
11 adverse Yanny II decision and obtain relief in Marin County
12 Superior Court that the Hon. Raymond Cardenas had already denied
13 them in Los Angeles County in Yanny II. Also, the effect of such
14 relief, in part, would be to prevent Armstrong from doing what
15 Judge Cardenas had expressly permitted both him and Yanny to do in
16 Yanny II. Specifically, at the August 6, 1991 hearing on
17 plaintiff's preliminary injunction in Yanny II, Judge Cardenas
18 issued a preliminary injunction, narrow in scope, against
19 defendant Yanny. Judge Cardenas stated that:

20 " . . . The Court makes no Order
21 precluding or preventing Mr. Yanny from
22 bringing any legal action against the
23 Plaintiffs, should he deem that he has been
24 wronged.

25 It is not an order that precludes him
26 [Yanny] from gathering evidence in support
27 of his case against the plaintiffs, nor does
28 it preclude him from talking to potential
witnesses for his case, should there be one.

I purposefully have not sought to
enumerate all the instances that are not
covered, but rather to give you some general
statements to give you some guideline.

1 . . . The Order is made this morning on
2 the premise that Mr. Yanny denies that he
3 represents Armstrong, and if that's the
4 case, he's not harmed in the interim by it,
5 but the comments made are intended to give
6 some insight that I don't anticipate nor
7 will I look too kindly on Plaintiffs
8 bringing Defendant Yanny in here for every,
9 little claimed wrong, because that is not
10 the intent."

11 See Berry Decl., Ex. A.

12 However, at the March 3, 1992 hearing herein, Scientology
13 attorney, Andrew H. Wilson, Esq., stated that the restriction they
14 sought "prevents Mr. Armstrong from actively aiding persons
15 engaged in litigation adverse to Church of Scientology." Berry
16 Decl., Ex. A, 10:26-11:2. Accordingly, the preliminary injunction
17 sought by plaintiff in Armstrong II would have the effect of
18 restricting Armstrong from talking to Yanny regarding Yanny II,
19 and providing evidence in Yanny II, contrary to the express order
20 of Judge Cardenas. Clearly, Judge Cardenas did not intend that
21 his Order prohibit Yanny from protecting his own rights and
22 preserving evidence for his defense. Remember that Yanny is not
23 seeking to intervene in Armstrong II as an attorney, but rather as
24 a defendant in another case who has been sued by Scientology,
25 which now seeks to shut down part of his defense as a result of
26 relief requested in this case.

27 X. THIS COURT CANNOT ORDER SPECIFIC PERFORMANCE OF THE
28 AGREEMENT BY WAY OF PRELIMINARY INJUNCTION.

A contract which requires a continuing series of acts and
demands cooperation between the parties for the successful
performance of those acts is not subject to specific performance.

1 Long Beach Drug Co. v. United Drug Co. (1939) 13 Cal. 2d 158, 171,
2 88 P.2d 698; Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.
3 (1967) 255 Cal. App. 2d 300, 303-04, 63 Cal. Rptr. 148; Whipple
4 Road Quarry Co. v. L.C. Smith Co. (1952) 114 Cal. App. 2d 214,
5 216, 249 P.2d 854. An injunction cannot be granted to prevent the
6 breach of a contract, the performance of which would not be
7 specifically enforced. Thayer, 255 Cal. App. 2d at 304; Cal. Civ.
8 Proc. Code §526(5); Cal. Civ. Code §3423(5). Courts of equity
9 will not decree the specific performance of contracts which, by
10 their terms, stipulate for a succession of acts whose performance
11 cannot be consummated by one transaction inasmuch as such
12 continuing performance requires protected supervision and
13 direction. Long Beach Drug Co., 13 Cal. 2d at 171 and cases
14 cited; Poultry Producers, etc., v. Barlow (1922) 189 Cal. 278,
15 289, 208 P. 93; Pacific Elec. Ry. Co. v. Campbell-Johnston (1908)
16 153 Cal. 106, 113, 94 P. 623; Thayer, 255 Cal. App. 2d at 304;
17 Moklofsky v. Moklofsky (1947) 79 Cal. App. 2d 259, 262, 179 P.2d
18 628; Moore v. Heron (1930) 108 Cal. App. 705, 711, 292 P. 136;
19 Sheehan v. Vedder (1930) 108 Cal. App. 419, 292 P. 175; .

20 In the present case, pursuant to the above principle, this
21 Court cannot order specific performance of the Agreement herein by
22 way of preliminary injunction. Specifically, Armstrong's duty to
23 be performed under the Agreement is a continuous one extending
24 over a long period of time, in reality, all of his life. Also,
25 for the performance of the Agreement to be effectual, it will
26 necessarily require constant supervision and oversight by this
27 Court. The provisions of the Agreement are multiple in number and
28 contemplate almost daily supervision by the parties and this

1 Court. And not only is the Agreement multiple, but the contact
2 between the parties must necessarily be continuous in nature.
3 Thus, as previously discussed, the enforcement of the Agreement is
4 an enforcement nightmare waiting to happen. Therefore, to
5 undertake to enjoin Armstrong by enforcement of the Agreement over
6 an indefinite term would impose upon this Court a duty well
7 impossible of performance. Accordingly, this Court should be
8 constrained to deny injunctive relief. See Long Beach Drug Co.,
9 13 Cal. 2d at 171-72.

10
11 XI. PLAINTIFF'S PRELIMINARY INJUNCTION SHOULD EITHER BE
12 DENIED OR SPECIFICALLY TAILORED TO EXPRESSLY PERMIT
13 ARMSTRONG TO ASSIST IN THE DEFENSE OF YANNY IN YANNY

14 II.

15 If any part of a single consideration from one or more
16 objects, or of several considerations for a single object, is
17 unlawful, the entire contract is void, unless, in the case where
18 the subject is unlawful in part, the lawful portion is several
19 from the unlawful. Cal. Civ. Code §§ 1598, 1608; 1 Witkin,
20 Summary of California Law §§ 429, 430; 14 Cal. Jur. 3d, §110.
21 Where it has several distinct objects, one of which is lawful and
22 another of which is unlawful, the contract is void as to the
23 latter and valid as to the former. Cal. Civ. Code §1599; 14 Cal.
24 Jur. 3d, §110. See also Mailand v. Burckle (1978) 20 Cal. 3d 367,
25 143 Cal. Rptr. 1; Beynon v. Garden Grove Medical Group (1980) 100
26 Cal. App. 3d 698; 161 Cal. Rptr. 146; Symcox v. Zuk (1963) 221
27 Cal. App. 2d 383, 34 Cal. Rptr. 462; Pitts v. Highland Constr. Co.
28 (1953) 115 Cal. App. 2d 206, 252 P.2d 14 (where any matter in

1 contract that is void even by statute is mixed up with good matter
2 which is entirely independent of the void matter, good part shall
3 stand, and rest will be held void); Ulene v. Jacobson (1962) 209
4 Cal. App. 2d 139, 26 Cal. Rptr. 257 (same).

5 In the present case, the restrictive unlawful provisions of
6 the Agreement can be severed from the Agreement, with the
7 Agreement being void as to the unlawful objects and still valid as
8 to the rest. In fact, Paragraph 16 of the Agreement provides for
9 the severability of unlawful provisions. Specifically, Paragraph
10 16 states: "In the event any provision hereof be unenforceable,
11 such provision shall not affect the enforceability of any other
12 provision hereof." Such severance would result in no injustice to
13 Armstrong or Scientology because the rest of the Agreement would
14 remain intact, thus avoiding the need to relitigate the underlying
15 case.

16 In addition, such severance would result in no injustice to
17 any of the parties involved in any of similar agreements between
18 Scientology and other attorneys because the settlement involving
19 each of the agreements would remain intact, the cases between
20 Scientology and those other attorneys would remain settled, and
21 the parties to these other agreements could then respond to lawful
22 process and provide testimony, and assistance, in related judicial
23 proceedings, such as Yanny seeks in Yanny II.

24
25 XII. CONCLUSION.

26 For the foregoing reasons, this court should deny
27 plaintiff's request for injunctive relief.

1 DATED: March 16, 1992.

2 LEWIS, D'AMATO, BRISBOIS & BISGAARD
3 DAVID B. PARKER
4 GRAHAM E. BERRY
5 JAYESH PATEL

6 By: Graham E. Berry

7 Graham E. Berry
8 Attorneys for Amicus Curiae Joseph A.
9 Yanny, an individual and Joseph A.
10 Yanny, a Professional Law Corporation.

11 Armstacb.m15
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28